

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Misc. no. 1300-B/2022
Mst. Sonia Bibi
versus
The State

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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24.10.2022	Malik Muhammad Ajmal Khan, Advocate for the petitioner Mr. Jameel Fayyaz Rajput, State counsel Iftikhar Ali SI with record
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Sardar Ejaz Ishaq Khan, J: The petitioner (*Mst.Sonia Bibi*) applies for post-arrest bail in case FIR No.442/2022 dated 12.06.2022 registered at Police Station Noon, Islamabad, under section 9(c) of the Control of Narcotic Substances Act, 1997 (CNSA).

2 The FIR narrates that the police party were at their picket for prevention of trafficking in narcotics when they observed the petitioner along with a man acting suspiciously on seeing the police after alighting from a bus, whereupon they were apprehended and a packet wrapped with solution tape was recovered from the petitioner, which on checking revealed heroin that was weighed at 1,115 grams along with the packing and the solution tape; hence the FIR.

3 Learned counsel for the petitioner contends that the petitioner is innocent and the accusations against her are false and frivolous; that the petitioner has been falsely implicated by the police; that the case of the petitioner is one of further inquiry in that the spot of her apprehension fell within the jurisdiction of another police station; that the petitioner has no criminal record; that the petitioner is behind bars since her arrest; that the petitioner is a female and belongs to a respectable family; and that the quantity recovered is below the borderline for bail in such cases.

4 Learned State counsel contends that the petitioner was apprehended red-handed in the presence of other police witnesses, that the forensic report is positive and therefore the petitioner was not entitled to the concession of bail.

5 The recovered narcotic per the FIR was weighed along with the packing and the tape wrapped around the package. This fact was found relevant by the Hon'ble Supreme Court in Ateeb ur Rahman @ Atti Mochi versus The State and others (2016 SCMR 1424) and in Aya Khan and another versus The State (2020 SCMR 350), where the court found that it created a doubt as to the net or gross weight of the recovered narcotics, and the benefit of any doubt has to go to the accused even at the bail stage. The weight of the narcotics without the packing could make it a case under section 9(b) CNSA, and the 7 year sentence prescribed thereunder does not fall within the ambit of the prohibitory clause of section 497 Cr.P.C.

6 The current borderline quantity is 1320 grams of narcotics per Noor Khan versus The State (2021 SCMR 1212). The quantity recovered from the petitioner is well below the current border line. The petitioner was arrested on 12.06.2022 and is behind bars ever since.

7 The petitioner is therefore admitted to post-arrest bail subject to furnishing bail bond in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of the learned trial court.

8 Be it noted all observations made in deciding this bail petition are tentative only and shall have no bearing on the merits of the case which is to be decided on the basis of the evidence led therein.

(Aamer Farooq)
Judge

(Sardar Ejaz Ishaq Khan)
Judge

Imran