

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

Criminal Misc. No. 407-B of 2021

Arshad alias Goga
Versus
The State.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(02)	06.05.2021	Mr. Ajmal Khan Khattak, Advocate for the petitioner / accused. Ms. Khadija Ali, State Counsel. Ashfaq Ahmed, S.I, P/S Sihala, Islamabad.

TARIQ MEHMOOD JAHANGIRI, J.- Through the instant petition, the petitioner seeks bail after arrest in case F.I.R. No. 120/2021, dated 04.03.2021, offence under section 9-C CNSA, 1997, registered at police station Sihala, Islamabad.

02. Brief allegations against the petitioner / accused are that he was apprehended by the police and from his possession chars weighing 1285 grams was recovered, hence the instant FIR.

03. Learned Counsel for the petitioner / accused contends that petitioner / accused has falsely been implicated in the case by the local police with malafide intentions; there is no apprehension of petitioner’s absconding or tampering with the prosecution evidence, if he is enlarged on bail; nothing has been recovered from the present petitioner on spot; the recovery, if any, effected from the petitioner / accused is planted one; there

is no single independent witness of the occurrence is available which makes the case of petitioner / accused one of further inquiry. He further contends that A.S.I who is below the rank of Sub-Inspector has allegedly seized the contraband, arrested the accused, registered the case against the petitioner / accused and also investigated the case which is sheer violation of the mandatory provision of sections 21 and 22, Control of Narcotic Substances Act, 1997, hence the petitioner / accused is entitled for grant of bail after arrest.

04. Conversely, learned State Counsel has vehemently opposed the bail petition and stated that huge quantity of chars was recovered from possession of the petitioner / accused. No enmity of police is on the record, which shows that the petitioner / accused is involved in this case due to enmity. The petitioner / accused is also involved in other cases. Hence, he is not entitled to the concession of bail.

05. We have heard the arguments advanced by learned counsel for the petitioner / accused, learned State Counsel for the state and perused the record with their able assistance.

06. It transpired from the record that the material investigation in this case regarding seizure, weighing, packing and sealing of chars into parcel, separation of some quantity of it for

chemical analysis through FSL has been carried out by Muhammad Zaman, ASI. Hence in this view of the matter contention of the learned counsel for the petitioner / accused that entire action taken by the said A.S.I by way of registration of a case under the provision of Control of Narcotic Substances Act, 1997 and its investigation by him from its inception to the end is violative of the law on the subject, seems forceful. Hence in view of the above discussion, keeping in view the principle laid down by Full Bench in (PLD 2001 Peshawar 152), the case of the petitioner / accused is one of further inquiry.

07. Report of chemical examiner is still awaited and the recovered substance is marginally exceeds 01-kilogram, so the petitioner / accused is not likely to be awarded maximum sentence provided by the statutes, the petitioner / accused is in jail and trial is not likely to be concluded in near future. Reliance is placed upon case titled as **“Saeed Ahmed V. State through P.G. Punjab and another” (PLJ 2018 SC 812)**, wherein bail after arrest of the accused, who was found in possession of 1350 grams of chars was allowed by the Hon’ble Supreme Court.

08. In another case titled as **“Abbas Raza V. The State through P.G. Punjab and other” (2020 SCMR 1859)**, accused found in possession of 1300 grams of contraband was allowed bail by the Hon’ble

Supreme Court. It has also been held by the Hon'ble Supreme Court, that "*the liberty of a person is a precious right which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973. The denial of the same should be such which can establish the guilt of the accused without second thought*".

09. As far as contention of learned State Counsel, that the petitioner is involved in other criminal cases is concerned, it would suffice that mere involvement in other cases would not disentitle him from the relief of bail if he otherwise succeeds in bringing his case within the meaning of further inquiry. Needful to add that liberty of a person is a precious right that has been guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. Hence in cases, where there is slight tilt towards grant of bail, the same needs to be preferred over letting one to confine in jail for an indefinite period in name of trial when conclusion thereof can competently impose due punishment for such released person. Further, learned State Counsel has not brought on record any material that petitioner / accused has been convicted in any other case, hence, mere involvement in criminal cases cannot be a ground to withhold the concession of bail in given circumstance. Reliance is placed upon the cases of "Moundar and others V. The State" (PLD 1990

SC 934), “Babar Hussain V. State” (2020 SCMR 871) and “Muhammad Rafique V. State” (1997 SCMR 412).

10. It has been held by the Hon’ble Supreme Court of Pakistan in a case titled as **Aya Khan and another V. The State (2020 SCMR 350)**, that *“Without discussing the merits of the case lest it prejudice the case of one or the other side, suffice it to say that in the FIR or in the recovery memo, no where it is stated that whether it was net or gross weight of the narcotics and in this eventuality it **becomes a border line case** between subsections (b) and (c) of section 9, C.N.S.A., 1997. Thus the benefit of doubt in this aspect shall go to the accused. In view of the principle of law laid down in the case of *Manzoor and 4 others v. The State (PLD 1972 SC 81)*” (Emphasis added), accused having possession of 1100 grams of chars was granted bail.*

11. It is an admitted position that only 1285 grams of chars was allegedly recovered from the accused. It has been consistent view of the superior Courts as well as this Court that in cases where recovery of narcotic substance does not exceed the limit between 900 to 1500 grams, the case being of borderline between clauses (b) and (c) of Section 9 of Control of Narcotic Substances Act, 1997, therefore, invariably in all cases applicants have been admitted to bail. In this

regard, guidance can be taken from the cases of *“Wajid alias Waji v. State” (2016 PCr.LJ 831)*, *“Ali Hassan @ Hasan v. State” (2014 YLR 188)*, *“Asif Ali v. State” (2013 YLR 1241)* and *“Ayaz v. State” (2011 PCr.LJ 177)*, in which cases where the recovery of substance does not exceed the limit between 900 to 1500 grams and it has been held by the superior Courts that the case being of borderline between clauses (b) and (c) of section 9 of CNS Act, 1997 and invariably in all cases applicants have been admitted to bail.

12. It is well settled principle of law that while deciding the bail application, before recording of evidence in the trial Court, only tentative assessment is to be made by the Court and it is not permissible to go into details of evidence in one way or the other that might prejudice the case of either party. In this regard reliance is placed upon *PLD 94 Supreme Court 65, PLD 94 Supreme Court 88, 2021 SCMR 111 and 2020 SCMR 937.*

13. We do not find this to be a case where bail should be refused as an exception. Ultimate conviction and incarceration of guilty accused can repair the wrong caused by mistaken relief of bail after arrest but no satisfactory reparation can be offered to the accused for his unjustified incarceration if he is acquitted ultimately.

14. A tentative assessment of record shows that present petitioner has made out a case of further

inquiry as envisaged under Section 497(2) Cr.P.C.

15. In view of above, instant petition is accepted and the petitioner is admitted to bail subject to furnishing bail bonds in the sum of **Rs. 1,00,000/- (Rupees One Hundred Thousand only)** with one surety in the like amount to the satisfaction of learned trial Court.

16. Needless to mention that, this is a tentative assessment which shall not affect the trial of case in any manner.

(AAMER FAROOQ)
JUDGE

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal

Approved for reporting.