

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

**Criminal Misc. No. 866-B/2020**

**Suleman Khan  
Versus  
The State**

<b>S. No. of order</b>	<b>Date of order</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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30.07.2020

Malik Khalid Hussain, Advocate for the petitioner.  
Ms. Khadija Ali, learned State Counsel,  
Mr. Muhammad Manzoor, S.I./I.O. of P.S. Koral, Islamabad.

**FIAZ AHMAD ANJUM JANDRAN, J.** Through this Crl. Misc. petition, petitioner (Suleman Khan) has prayed for post-arrest bail in case FIR No.359, dated 21.06.2020, registered under Section 9-C Control of the Narcotics Substances Act, 1997, at Police Station Koral, Islamabad.

2. According to the allegations set-forth in the FIR, on 21.06.2020, the petitioner was arrested at Service Road (East), Khanna, Islamabad, on spy information, and on search 1520 grams *charas* was recovered from his possession out of which 10 grams was separated for chemical examination. Hence, this FIR.

3. Learned counsel for the petitioner contends that the prosecution story is false, frivolous and concocted; that nothing was recovered from the possession of the petitioner as the alleged recovery of contraband is fake/planted; that there is no eye witness to the alleged occurrence; that the prosecution did not follow the provisions of law prescribed in CNSA. In making his submissions, learned counsel for the petitioner placed reliance on the judgments reported as 2008 P.Cr.L.J. 1437 and 2004 YLR 439.

4. Conversely, learned State Counsel contends that the petitioner is nominated in the FIR and was arrested at the spot; that the alleged charas recovered from the possession of the petitioner is *prima facie* a huge quantity, which falls within the prohibitory clause of section 497 Cr.P.C. and does not fall within the definition of border line case; therefore, the petitioner is not entitled to the concession of bail. In support of her contentions, learned State Counsel placed reliance on the case law reported as **Baber Shah Vs. The State (2019 YLR 1340)**.

5. Arguments heard, record perused.

6. Perusal of record reveals that **1520 grams of charas** was recovered from the possession of the petitioner. The quantity of narcotics substance entails death punishment, life imprisonment or imprisonment up to 14 years and falls within the ambit of prohibitory clause of Section 497 Cr.P.C., therefore, in such type of cases, no benefit could be extended to the petitioner/accused.

7. In the case of **Baber Shah Vs. The State (2019 YLR 1340)**, the Hon'ble High Court of Azad Jammu & Kashmir, while rejecting the bail petition, held that Rules 4 and 5 of the Narcotics Substance (Government Analysts) Rules, 2001 indicates that the said Rules did not place any bar on Investigating Officer to send samples beyond seventy-two hours of seizure of substance. Moreover, Rules 4 and 5 are directory in nature and not mandatory, same cannot control substantive provisions of CNSA, therefore, are to be applied in such a manner that its operation would not

frustrate the purpose of CNSA under which those were framed. Thus, failure to follow the said Rules would not render seizure of the alleged substance an absolute nullity.

8. The trial could not be concluded yet, as the Court remained vacant due to non-availability of the learned Presiding Officer while Court work also remained in-halt due to pandemic of COVID-19, therefore, the delay cannot be attributed to the prosecution or the Court. Record further reveals that the petitioner/accused was arrested on 21.06.2020 while report under Section 173 Cr.P.C. has been submitted on 06.07.2020 and trial of the petitioner/accused is likely to be commenced shortly.

9. In view of above, the petitioner is not entitled to the concession of post arrest bail. Therefore, instant post arrest bail petition is **dismissed**. However, the petitioner has a legitimate right that his case is to be decided as early as possible, therefore, while relying upon case law reported as **"2011 SCMR 1332 (Rehmatullah and another Vs. the State)"**, the learned Trial Court is directed to conclude the trial within a period of two months after the receipt of this order under intimation to this Court by proceedings with the case on day-to-day basis.

10. Due to prevailing situation of COVID-19 pandemic, the learned Trial Court shall arrange video link facility to the accused for earlier conclusion of the trial without wastage of time for their production before the Court from Adyala Jail, Rawalpindi which is not possible in the present situation.

11. The learned State Counsel apprised that the video link facility has been arranged in the Trial Court, therefore, the Police Authorities are directed to produce all the witnesses on the next date of hearing to ensure speedy conclusion of the trial.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

**(FIAZ AHMAD ANJUM JANDRAN)**  
**JUDGE**

**"M.A. Raza"**