

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

Criminal Misc. No. 703/2020

Ashfaq

Vs

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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19.05.2020	Mr. S.A. Mahmood Khan Sadozai, learned ASC for the petitioner. Dr. Waseem Ahmad Qureshi, Special Prosecutor ANF alongwith Sheeraz Sabir, Inspector.
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FIAZ AHMAD ANJUM JANDRAN, J. Through the instant petition under Section 497 Cr.P.C, the petitioner, Ashfaq, seeks his bail after arrest in case F.I.R. No.92/18, dated 30.06.2018, registered under Sections 9-C and 15 of the Control of Narcotics Substances Act, 1997 ("the 1997 Act") at Police Station A.N.F./RD North, Rawalpindi.

2. According to the allegations set-forth in the FIR, on the basis of spy information, on 30.06.2018 a raiding party of the ANF officials intercepted the present petitioner and his companions, while boarding Suzuki Mehran Car registration No.LEB-1891 and in consequence of its search, 5-KG of heroin was recovered from the back doors of the said car.

3. Learned counsel contends that co-accused namely Shah Fahad, Imran, Farooq and Taimoor were allowed bail by this Court and by the learned Trial Court as well, therefore, present petitioner deserves the same treatment on the principle of consistency; that earlier bail petition of the petitioner was dismissed by this Court vide order dated 05.12.2019 with direction to conclude the trial within a period of two months but despite lapse of more than five months, the conclusion of

the trial is not in sight; that the petitioner is behind the bars for a period of about 23 months, therefore, entitled to the concession of bail.

4. Conversely, the learned Special Prosecutor ANF submits that the delay in conclusion of trial is due to non-availability of learned Presiding Officer of the Special Court and Covid-19 Pandemic; that the statements of only two PWs are left to be recorded and that the trial is near to conclusion, therefore, petitioner is not entitled to the concession of bail.

5. Arguments heard, record perused.

6. Admittedly, co-accused Imran was allowed bail by this Court vide order dated 09.07.2019 while co-accused Taimoor and Farooq were granted the same concession by the learned Special Court vide order dated 06.09.2019. The first application of the petitioner was turned down by this Court vide order dated 05.12.2019, with the direction to the learned Trial Court to conclude the trial within a period of two months but the same has not yet been concluded and the delay mainly is not attributed to the petitioner.

7. The contention of the learned counsel that since the direction of this Court vide order dated 05.12.2019 not a single witness has been examined by the prosecution, has not been rebutted by the learned Prosecutor-ANF. The petitioner is behind the bars for the last about 23 months and the conclusion of trial in near future is not in sight.

8. It is by now well settled that an accused person cannot be left at the mercy of the prosecution to remain in jail for an indefinite period. The liberty of an individual has been guaranteed by the Constitution and to have a

speedy trial is an inalienable right of every accused person. The Hon'ble Apex Court in case of **"Imtiaz Ahmed Vs The State through Special Prosecutor, ANF (2017 S C M R 1194)** held that:-

"17. To have a speedy trial, is the fundamental right of accused being universally acknowledged. Under the Criminal Procedure Code, smooth methodology and scheme for speedy trial, is provided whether it is held by the Session Court or Magistrate, in recognition of the said right of an accused person. This principle shall apply more vigorously to the trials before Special Courts, constituted under the CNS Act, or any other special law so that unnecessary delay, much less shocking one in its conclusion is avoided in all circumstances. Any unreasonable or shocking delay in the conclusion of the trial, before Special Courts, like we are confronted with in the present case, would amount to denial of justice, or to say, denial of fundamental rights, to the accused, of speedy trial."

9. Co-accused have already been granted bail, the delay in conclusion of trial is not attributed to the petitioner, he is behind the bars for about two years, therefore is entitled to the concession of bail.

10. Consequently, the instant bail petition is **allowed**, petitioner (Ashfaq) is admitted to post-arrest bail subject to furnishing bail bonds in the sum of **Rs.500,000/-** (Rupees Five Lac) with one surety in the like amount to the satisfaction of the learned Trial Court.

11. Needless to mention that this is tentative assessment for the purpose of this petition only, which shall not affect/influence trial of this case in any manner.

(MIANGUL HASSAN AURANGZEB) (FIAZ AHMAD ANJUM JANDRAN)
JUDGE JUDGE