

Form No: HCJD/C-121.

**ORDER SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

Crl. Misc. No. 612-B of 2020.

Tahir Alam.

***Vs***

The State.

<b>S. No. of order/ proceedings</b>	<b>Date of order/ proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
02.	01.04.2020.	Mr Shan Zeb Khan, Advocate for the petitioner. Dr. Waseem Ahmad Qureshi, Special Prosecutor, ANF. Mr Sheraz, Inspector/I.O. ANF with record.

The petitioner Tahir Alam son of Sher Alam Khan has sought post arrest bail in case F.I.R. No. 95, dated 12.07.2018 registered under section 9-C of the Control of Narcotics Substances Act, 1997 (hereinafter referred to as ***"CNSA of 1997"***) at Police Station ANF/RD North, Rawalpindi.

2. Brief facts, as alleged in the FIR are that pursuant to an information, officials of the Anti-Narcotics Force, intercepted a vehicle. The petitioner was driving the vehicle. The search of the vehicle led to recovery of "charas", weighing 5000 grams. Hence the instant petition.

3. The learned counsel for the petitioner has contended that; the latter has been falsely involved in the instant case; no incriminating material was recovered from the petitioner; the petitioner is innocent and has not committed the alleged offence; story as narrated in the FIR is false, frivolous, vexatious and concocted; the petitioner has been incarcerated for more than twenty months; the learned trial Court remained dysfunctional for a long period; charge was framed on 26.10.2018 and only statements of two witnesses have been recorded as yet; offence does not fall within the prohibitory clause of section 497 of Cr.P.C.; the petitioner has also sought bail on statutory ground; the petitioner has no criminal record; investigation qua the petitioner has been completed and he is no more required for the purposes thereof; the petitioner was not apprehended at the time of selling of narcotic; there is violation of section 103 of Cr.P.C., as no private witness was associated during recovery proceedings; meagre quantity of narcotic was sent for chemical examination; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; fake recovery has been planted; there is no direct or indirect evidence against the petitioner; offence is not attracted against the petitioner; further incarceration of the petitioner will not serve any useful purpose; the petitioner had not made any disclosure leading to recovery of contraband substance; mere nomination in the FIR does not imply that the petitioner knew about concealment of contraband substance; the case against the

petitioner is that of further probe; there is no proof of selling of narcotics; sections 20, 21 and 22 of CNSA have been violated; the petitioner is victim of malicious prosecution; hence prayed for the grant of post arrest bail.

4. The learned Special Prosecutor, ANF appeared alongwith Sheraz, Inspector/I.O. ANF. They have contended that; the petitioner has been nominated in the FIR with specific role; the petitioner was arrested from the crime scene; 5000 grams of charas was recovered from the petitioner concealed in secret cavities of the vehicle; report under section 173 of Cr.P.C. has been submitted before the learned trial Court; charge has been framed; some of the prosecution witnesses have been recorded and remaining witnesses will be recorded shortly; report of Chemical Examiner is positive; substantial quantity of contraband substance has been recovered from possession of the petitioner; most of adjournments have been granted either on the request of the petitioner or his counsel; the petitioner has failed to point out any malafide on part of the prosecution; hence urged for dismissal of the present bail application.

5. The learned counsel for the petitioner and the learned Special Prosecutor, ANF has been heard and record perused with their able assistance.

6. The petitioner has sought post arrest bail on merits as well as on statutory ground. Perusal of record shows that the learned trial Court remained dysfunctional for a long time therefore, the proceedings of the case were delayed. However, the learned trial Court has now become functional. Substantial quantity of contraband substance was recovered from the crime scene. The petitioner was the sole accused who was red handed apprehended by the police. Chemical Examiner report is positive. As far as statutory ground for extending concession of bail to the petitioner is concerned, record reveals that charge against the petitioner was framed on 26.10.2018 and so far two witnesses have been examined. Perusal of order sheets shows that on several dates of hearing the prosecution witnesses were in attendance but their statements could not be recorded because adjournment was sought on behalf of the petitioner. Now, the learned Court has become functional and, therefore, keeping in view of the status of trial, its conclusion at an early date can be reasonably predicted. We, therefore, are not inclined to allow this petition. We expect that the prosecution will not seek adjournments and produce the witnesses before the learned trial Court without causing delay. Likewise, we also expect that the petitioner and his counsel will ensure that the proceedings are completed at the earliest.

7. In the circumstances, we are not inclined to exercise discretion by extending the concession of bail. The present petition is, therefore, accordingly, ***dismissed.*** However, we expect that the learned trial Court will conclude the trial expeditiously.

Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which will obviously not prejudice the proceedings before the learned trial Court.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

(CHIEF JUSTICE)

*Asad K/\**