

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

CRL. MISC. NO. 1318-B of 2020.

Rafique Ahmed.
VERSUS
The State.

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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28.12.2020. Raja Shahzad Anwar, Advocate for the petitioner.
Mr Arif Riaz Butt, Special Prosecutor, ANF.
Mr Naseer, S.I/I.O. ANF with record.

The petitioner Rafique Ahmed son of Ghulam Hussain has sought post arrest bail in case F.I.R. No. 106, dated 28.10.2020, registered under section 9-C, 15, 6 and 8 of the Control of Narcotics Substance Act, 1997 (hereinafter referred to as the "**Act of 1997**"), at Police Station ANF(RD) North, Rawalpindi.

2. Brief facts, as narrated in the FIR are that pursuant to an information, officials of the Anti-Narcotics Force, intercepted a bus/vehicle, which was being driven by the present petitioner. The search of the bus/vehicle led to recovery of 'charas' weighing 4400 grams, which was kept in secret cavity of the said vehicle. Hence the instant petition.

3. The learned counsel for the petitioner has contended that; the latter is innocent and no incriminating material was recovered from him; the petitioner has no concern whatsoever with the alleged recovery; there is violation of section 103 of PPC because no independent witness

was associated during recovery proceedings; the petitioner has been incarcerated for almost two months; recovery if any is fake and concocted; there is no evidence against the petitioner; further incarceration of the petitioner will not serve any useful purpose; the petitioner has no criminal record; there is no other case against the petitioner except the present case; investigations qua the petitioner have been completed and he is no more required for the purposes thereof; the petitioner has not committed any offence; the petitioner has been falsely involved in the instant case; the petitioner has been involved in the instant case with ulterior motives; story as narrated in the FIR is false and vexatious; the petitioner has maliciously been involved in the instant case; offence does not fall within the ambit of prohibitory clause of section 497 of Cr.P.C.; there is no evidence of sale/purchase of contraband substance; report under section 173 of Cr.P.C. has been submitted before the learned trial Court; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; the petitioner is ready to furnish surety to the satisfaction of the Court; the petitioner is not the owner of the bus/vehicle from which the alleged recovery has been affected; there appears no reasonable ground for believing that the petitioner has committed any offence; there are sufficient grounds for further inquiry into the guilt of the petitioner. Hence urges for the grant of post arrest bail.

4. The learned Special Prosecutor, ANF appeared alongwith Naseer/S.I/I.O. They have opposed the grant of bail. It is contended that; substantial quantity of contraband substance was recovered from the petitioner; the petitioner is one of the member of gang, which is engaged

in sale of the contraband substance; the petitioner was arrested from the crime scene alongwith substantial contraband substance, which he had kept in secret cavity of the vehicle; report under section 173 of Cr.P.C. has been submitted before the learned trial Court; the trial of the case will be concluded shortly; the agency had no previous enmity with the petitioner; report of chemical examiner is positive; the officials are competent witnesses; hence, they have opposed the grant of bail.

5. We have heard the learned counsels for the parties and perused record with their able assistance.

6. Perusal of the record reveals that 'charas' weighing 4400 grams was recovered from the petitioner. Allegedly, the contraband substance was concealed in secret cavity of the bus/vehicle. The factor of conscious knowledge at this stage obviously cannot be ruled out. Substantial quantity of contraband substance was recovered from the petitioner. Samples of the contraband substance were separated for Chemical Examination and sent for analysis. The report of Chemical Examiner was positive. There is sufficient incriminating material placed on record to decline post arrest bail. The trial of the case is expected to be concluded shortly. We have been informed that there are six witnesses who are to be examined in this case. We are, therefore, not inclined to extend the concession of bail. However, we expect that the learned trial Court will endeavour to conclude the trial expeditiously. We also expect that the prosecution as well as the petitioner will ensure that trial is not delayed.

7. For the above reasons, bail is ***refused*** and the instant petition is accordingly ***dismissed***.

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.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

(CHIEF JUSTICE)

*Asad K/**