

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Miscellaneous No.805-B /2019

Muhammad Babar

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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02.01.2020 Mr. Ajmal Khan Khattak, Advocate for the petitioner.
Dr. Waseem Ahmad Qureshi, Special Prosecutor (ANF).
Naseer, S.I. ANF with record.

The petitioner (Muhammad Babar S/o Muhammad Rafique) seeks bail after arrest in case F.I.R. No.89 dated 28.06.2018 for offence under Section 9-C Control of Narcotic Substances Act, 1997 (CNSA) read with Sections 13/20/65, the Punjab Arms Ordinance, 1965 registered with Police Station ANF-RD North, Rawalpindi.

2. The case of the prosecution against the petitioner is that he was apprehended alongwith others with narcotic substance which turned out to be *Charas* weighing 4-kg. The petitioner was also in possession of a pistol, hence was also booked for the said offence.

3. The petitioner applied bail after arrest which was dismissed by the learned Trial Court vide order dated 27.05.2019.

4. Learned counsel for the petitioner *inter alia* contended that the case is one of borderline; that trial is pending for the last about one and a half years without any progress; that investigation stands concluded and nothing is to be recovered from the petitioner; that delay in the progress of the trial is due to failure on part of the prosecution to lead evidence. Reliance was placed on the case titled Muhammad Afzal and 2 others v. The State (2012 MLD 220) and Noshad v. The State (2012 P Cr. L. J. 1901).

5. The Special Prosecutor (ANF), *inter alia*, contended that there are only five witnesses of the prosecution and the evidence of three has been completed whereas the evidence of two is remaining and the delay, if any, is due to non-availability of the learned Presiding Officer. It was also submitted that the petitioner is not entitled to the concession of bail due to delay inasmuch as out of almost 22 hearings about half of them are attributed to the defence.

6. In rebuttal, learned counsel for the petitioner contended that the delay could be attributed to the petitioner only if the prosecution had recorded examination-in-chief of remaining witnesses but since

the witnesses are not available, the needful could not be done.

7. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record as well as the police file perused with their able assistance.

8. The petitioner is implicated with offence under Section 9-C CNSA. The referred provision of law makes the offence fall in prohibitory category for purposes of bail as maximum sentence is capital punishment. Though it has been argued by the learned counsel for the petitioner that the case is one of borderline and the reliance was placed on Muhammad Afzal and 2 others v. The State (2012 MLD 220) and Noshad v. The State (2012 P Cr. L. J. 1901); however, since in the instant matter the trial is at an advanced stage, the indulgence cannot be shown by releasing the petitioner on bail. The petitioner has not appended the case diary alongwith the petition to substantiate his plea that delay is on part of prosecution. In such facts and circumstances, it would be appropriate that a direction be issued to the learned Trial Court for expeditious decision of the case.

9. In view of above, we are not inclined to enlarge the petitioner on bail, hence the instant petition is dismissed. However, the learned Trial Court is directed

to conclude the trial within a period of two months from
the date of this order.

(LUBNA SALEEM PERVEZ)
JUDGE

(AAMER FAROOQ)
JUDGE

M.NAVEED