

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

Crl. Misc. No.133-B/2020
Amir Waseem
versus
The State & another

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(2)	04.03.2020	Raja Rizwan Abbasi and Ch. Gulfam Ashraf Goraya, Advocates for petitioner. Dr. Waseem Ahmad Qureshi, Special Prosecutor, ANF. Sheraz, Inspector, ANF.

MOHSIN AKHTAR KAYANI, J: The petitioner through this criminal miscellaneous petition has prayed for his post arrest bail in case FIR No.181, dated 05.09.2019, under Section 9-C/15 CNSA, 1997, P.S. ANF-RD (North), Rawalpindi.

2. Brief facts as referred in the aforesaid FIR are that on 04.09.2019, the police party on receiving spy information intercepted vehicle (ALY-333), which was being driven by one Falak Sher/co-accused, who disclosed about presence of 3.50 Kilograms heroin lying beneath the driving seat and linked the petitioner with the same as he was also sitting on the front seat. Accordingly, the aforesaid FIR No.181/2019 was registered against the said accused persons. Hence, the instant criminal miscellaneous petition for post-arrest bail.

3. Learned counsel for petitioner contends that the petitioner has falsely been implicated in the instant criminal case as nothing has been recovered from the petitioner and as such, there is no role or connection of petitioner with the alleged recovery of contraband, even otherwise, the investigation has been completed and keeping the petitioner behind the bars would serve no purpose, therefore, he may be enlarged on bail till final decision of the instant criminal case.

4. Conversely, learned Special Prosecutor ANF opposed the filing of instant criminal miscellaneous petition for post arrest bail and contended that the petitioner was caught red handed while in possession of huge quantity of contraband; that sufficient evidence is available on record to establish the link of the petitioner with the commission of offence under Section 9-C CNSA, 1997, which falls within the prohibitory clause of Section 497 Cr.P.C., therefore, releasing the petitioner on bail would defeat the purpose of settled law.

5. Arguments heard, record perused.

6. Tentative assessment of record reflects that the petitioner was arrested in the instant case on 04.09.2019 while accompanying co-accused Falik Sher from Honda Car No.ALY-333, which was driven by co-accused. Co-accused disclosed the concealment of Heroin under driving seat containing three packets weighing 3500 grams Heroin. Learned counsel for the petitioner has mainly argued the case on the strength that the petitioner was sitting on second seat and had no knowledge about the transportation of Heroin concealed by co-accused Falik Sher and he has no connection whatsoever with co-accused, however, all these facts can only be appreciated during the trial. Even otherwise, the burden to prove this plea lies upon the petitioner/accused to adduce evidence to controvert the prosecution evidence to get absolved himself from the allegation of having or carrying contraband in terms of section 29 of Control of Narcotic Substances Act, 1997, therefore, such plea at this stage cannot be appreciated. Conscious knowledge of the petitioner/accused cannot be measured or determined at this stage on his simple statement that he has no relationship with co-accused.

7. No justified reason has been brought on record by the petitioner during investigation to get himself absolved

from the huge quantity of Heroin recovered from the same vehicle, when the vehicle is not public service vehicle rather a private car. Case against the petitioner falls within purview of section 51 of the Control of Narcotic Substances Act, 1997, under which question of post arrest bail cannot be considered at the touch stone of section 497, Cr.P.C.

8. Challan has been submitted before the Court, even charge has been framed on 04.02.2020 as such the trial is in progress and in such like cases the Courts should not grant bail rather it would be appropriate to issue direction to Trial Court for early conclusion of trial. Reliance is placed upon 2011 SCMR 1332 (Rehmat Ullah vs. The State & another).

9. For what has been discussed above, the instant petition for post arrest bail is dismissed. However, learned Trial Court seized with the matter is directed to conclude the trial within a period of 06 months from the date of receipt of copy of this order under intimation to this Court.

(LUBNA SALEEM PERVEZ)
JUDGE

(MOHSIN AKHTAR KAKHANI)
JUDGE

R. Anjam.