

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

Criminal Misc. No. 834-B/2020
Muhammad Fahad Malik
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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22.07.2020	Mr. Muahmnamd Fahad Shabbir, Advocate for the petitioner. Dr.Waseem Ahmad Qureshi, Special Prosecutor, ANF.
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FIAZ AHMAD ANJUM JANDRAN, J. Through this CrI. Misc. petition, petitioner (Muhammad Fahad Malik) seeks bail after arrest in FIR No. 53, dated 15.03.2019, registered under Sections 9-C and 15 of Control of Narcotics Substances Act, 1997, at Police Station A.N.F./RD North, Rawalpindi, on statutory ground.

2. Brief facts, as stated in the instant FIR are that on 15.3.2019 complainant Raja Shoaib Ahmad Inspector received spy information regarding supply of huge quantity of narcotics near Khudadad Heights Margallah Road, E-11, Islamabad. Upon this Inspector constituted a raiding party and reached the place, pointed by the informer. At about 11:30, two persons reached there and were apprehended. On their personal search, one packet of charas was recovered from each accused. The weight of each packet was 1600 grams charas, thus **total 3200 grams** charas was recovered from both the accused.

3. Learned counsel for the petitioner contends that earlier three bail petitions of the petitioner were dismissed on merits and the directions were issued twice to the learned Trial

Court for earlier disposal of the case vide orders dated 28.5.2019 and 11.02.2020 respectively, but the directions have not been complied with. Further contends that no specific date has been granted by the learned Trial Court on the request of the petitioner while PWs were also not present, therefore, to condone the delay in such like matters should not be useful; that directions issued by this Court have not been complied with by the learned Trial Court; that the petitioner is behind the bars since 15.3.2019 and since then trial has not been concluded despite directions, therefore, petitioner is entitled for the grant of bail on statutory ground. Learned counsel fortified his submissions by placing reliance upon case laws reported in 2012 SCMR 573(Jamal-ud-Din alias Zubair Khan Vs. the State); and 2017 SCMR 1194 (Imtiaz Ahmed Vs. The state through Special Prosecutor, ANF).

4. Conversely, learned Special Prosecutor ANF contends that the petitioner is nominated in the FIR, arrested at the spot alongwith co-accused and 1600 grams of charas was recovered from each accused; the charge has been framed on 24.9.2019; statement of one PW has been recorded and the remaining evidence will be recorded shortly, therefore, he is not entitled to the concession of bail.

5. Arguments heard, record perused.

6. Perusal of record reveals that 1600-grams of charas was recovered from the possession of the petitioner. The petitioner is nominated in the FIR and the quantity of narcotics substance recovered falls within the ambit of prohibitory clause of Section 497 Cr.P.C and

entails death punishment, life imprisonment or imprisonment up to 14 years. Therefore, in such type of cases, no benefit could be extended to the petitioner/ accused especially when the trial is in progress and examination-in-chief of one PW has already been recorded.

7. The sample was sent for chemical examination on 18.3.2019 and the report of the Chemical Examiner confirms that the recovered substance was Charas that, too, goes against the petitioner.

8. The trial could not be concluded as per the directions issued by this Court vide orders dated 28.5.2019 and 11.02.2020 respectively, as the Court remained vacant due to non availability of the learned Presiding Officer while court work also remained in-halt due to pandemic of COVID-19, therefore, the delay cannot be attributed to the Prosecution or the Court. Record further reveals that third bail petition of the petitioner on the ground of non-compliance of directions issued by this Court was also dismissed vide order dated 28.4.2020 therefore, this ground is also not available to the petitioner.

9. In the case of *Imtiaz Ahmad (supra)*, the delay was attributed to the Trial Court, accused was of advanced age suffering from sickness while in case of *Jamal-ud-Din (supra)*, there was no dismissal of earlier bail petitions on merits, therefore, both the referred case law do not extend any help to the petitioner due to having distinct facts and circumstances.

10. In view of above, the petitioner is not entitled to the concession of post arrest bail.

Therefore, instant post arrest bail petition is **dismissed**. However, the petitioner has a legitimate right that his case is to be decided as early as possible, therefore, while relying upon case law reported as **"2011 SCMR 1332 (Rehmatullah and another Vs. the State)"**, the learned Trial Court is directed to conclude the trial within a period of **thirty (30) days** after the receipt of this order under intimation to this Court by proceedings with the case on day-to-day basis.

11. The learned Prosecutor ANF apprised that the video link facility has been arranged in the Trial Court, therefore, the ANF Authorities are directed to produce all the witnesses on the next date of hearing to ensure speedy conclusion of the trial.

(MOHSIN AKHTAR KAYANI)
JUDGE

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE