

HCJD/C-121  
ORDER SHEET

ISLAMABAD HIGH COURT  
ISLAMABAD

Crl. Misc. No. 642-B of 2020.

Mst. Shamim Akhtar, etc.

*VERSUS*

The State, etc.

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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28.04.2020. Mr Ghulam Nabi Balouch, Advocate for the petitioners.  
Dr. Waseem Ahmed Qureshi, Special Prosecutor, ANF.  
Mr Sheraz, Inspector, ANF with record.

The petitioners namely, Mst. Shamim Akhtar wife of Muhammad Ashraf and Mst. Sidra wife of Wariam have sought post arrest bail in case, F.I.R. No. 22 dated, 04.02.2020, registered under sections 9-C/15 of 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 alleged in the FIR, are that pursuant to an information, the officials of Anti-Narcotics Force arrested the present petitioners after 1000 grams of 'heroin' from each accused was recovered. Hence the instant petition.

3. The learned counsel for the petitioners has contended that; the latter are innocent and have been falsely involved in the instant case; the petitioners have no concern whatsoever with the alleged offence; no incriminating material was recovered from them; recovery if any is fake and planted; there is no evidence of sale/purchase of the contraband

substance; there is violation of section 103 of Cr.P.C., as no private witness was associated during recovery proceedings; the petitioners are women; the petitioners have no criminal record; offence is not attracted against the petitioners; offence does not fall within the ambit of prohibitory clause of section 497 of Cr.P.C.; the petitioners have been incarcerated for the last about three months; investigations qua the petitioners have been completed and they are no more required for the purposes thereof; there is no chance of abscondance of the petitioners or tampering with the prosecution evidence; case against the petitioners has been registered due to malafide; report of Chemical Examiner is still awaited; there is violation of Rules of 2001 of CNSA; no specific role has been attributed to the petitioners; story as narrated in the FIR is false and fictitious; there is no evidence against the petitioners to connect them with the commission of the alleged offence; incomplete report under section 173 of Cr.P.C. has been submitted before the learned trial Court; ingredients of sections 20, 21 and 22 of CNSA are not fulfilled; the petitioners have no nexus with the alleged offence; the quantity alleged to have been recovered makes it a border line case; the petitioners are ready to furnish surety to the satisfaction of the Court; there appears no reasonable ground for believing that the petitioners have committed any offence; there are sufficient grounds for further probe into the guilt of the petitioners. Hence urges for the grant of post arrest bail.

4. The learned Special Prosecutor, ANF appeared alongwith Sheraz Inspector. They have opposed the grant of bail. They have contended that; the petitioners are nominated in the FIR; specific role has been attributed to the petitioners; the petitioners were arrested after

recovery of contraband substance; recovery of 1000 grams from each petitioner was affected; report under section 173 of Cr.P.C. has been submitted before the learned trial Court; however, it is admitted that the report of Chemical Examiner is still awaited; hence, prayed for dismissal of the bail petition.

5. We have heard the learned counsel for the petitioner and the learned Special Prosecutor, ANF and perused record with their able assistance.

6. Perusal of the record reveals that 1000 grams of 'heroin' from each petitioner was recovered. It cannot be ruled out at this stage that quantity of narcotics recovered in this case may bring the offence under section 9 (b) of the Control of Narcotics Substances Act, 1997. The gravity of the offence has nexus with the quantum of contraband narcotics recovered from an accused, which is yet to be determined by the learned trial Court. Whether or not the recovered narcotics were properly weighed needs further probe. The petitioners were arrested on 04.02.2020 and investigations qua them have been completed. They were arrested from a public place and it cannot be ruled out that they may have acted independently. The latter are no more required for further investigations. Their further incarceration will not serve any useful purpose. Report of Chemical Examiner is still awaited and at this stage it cannot be presumed that the recovered contraband substance is a narcotic. Furthermore, incomplete report under section 173 of Cr.P.C. has been submitted before the learned trial Court and there is nothing on record to form an opinion that the petitioners may abscond or tamper

with evidence if released on bail. We are of the opinion that a case for extending the concession of bail is made out.

7. It has been aptly observed by the august Supreme Court in the case of "*Manzoor and 04 others versus The State*" reported as [PLD 1972 S.C. 81] as follows:

*"The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run".*

8. In the circumstances as mentioned above, this petition is ***allowed***, subject to furnishing bail bonds in the sum of Rs. 100,000/- (Rupees one hundred thousand only) each with one surety each in the like amount to the satisfaction of the learned trial Court.

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.

**(AAMER FAROOQ)**  
JUDGE

**(CHIEF JUSTICE)**