

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

Criminal Misc. No. 900-B/2020

Hameed Ullah

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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19.08.2020

Mr. Muhammad Irfan Minhas, learned Advocate for the petitioner.

Mr. Husnain Haider Thaheem, learned State Counsel with Mumtaz SI, PS Golra, Islamabad.

FIAZ AHMAD ANJUM JANDRAN, J. Through the instant petition under Section 497 Cr.P.C, the petitioner (Hameed Ullah) seeks post arrest bail in F.I.R. No.401, dated 14.07.2020, registered under Section 9-C of the Control of Narcotics Substances Act, 1997, at Police Station Golra, Islamabad.

2. The allegations, set-forth in the FIR are that on 14.7.2020, at about 04:30 p.m. near YZ, CNG Station, Main GT Road, in the area of P.S. Golra Sharif, Islamabad, a spy information was received that two persons in the area of Dhok Khokran near Minarwali Masjid ground were selling narcotics. On this information, raiding party was constituted and reached at the above mentioned place and apprehended one person, who disclosed his name as Hameed Ullah and on his personal search 1025 grams charas in the shape of lithar was recovered, hence the instant FIR.

3. Learned counsel for the petitioner contends that the alleged recovery apparently falls under Section 9(C) of CNSA, 1997 but slightly exceed the maximum limit as prescribed in Section 9(b) of CNSA, 1997 just to strengthen the case; that petitioner is previously non-convict, having no

criminal and falsely been involved in the present case, therefore, he is entitled to the concession of bail.

4. Conversely, learned State Counsel contends that the petitioner was caught red-handed while in possession of 1025 grams charas; that investigation has been completed and challan has also been submitted in the Court on 18.7.2020, therefore, he is not entitled to the concession of bail.

5. Arguments heard, record perused.

6. The case of the petitioner as per FIR is recovery of 1025 grams Charas, which is a borderline case and is marginally in excess of 1 kg quantity. In such like cases, the Hon'ble Supreme Court of Pakistan granted bail on the basis of borderline case and in this respect reliance is placed on 2020 SCMR 350 (Aya Khan and another Vs. The State) and another judgment reported as PLJ 2018 SC 812 (Saeed Ahmed Vs. The state etc), wherein 1350 grams substance recovered marginally exceeds 1 k.g. and benefit of bail was extended to the accused.

7. Moreover, the challan has already been submitted before the Court of competent jurisdiction on 18.7.2020 and the petitioner is no more required for further probe. He has no previous record of narcotics, this fact also extends benefit to him.

8. The instant FIR has been registered by the CIA Staff and not by the police, who was not competent to investigate and process the case, while under the law they were required to inform the concerned police station for further progress of the matter. In this respect, reliance is placed on

2020 MLD 282 (Sindh) (Naseer Ahmad Versus The State), wherein it has been held as under:-

- “(h) The DPG has call investigation officer of the case, who is also complainant. The DPG after consulting the investigation officer SIP Roshan Ali informs that CIA Centre is not a police station and investigation was not assigned to him by the SSP or DIG.
 (i) Since, the complainant is not the Officer Incharge of Police Station nor he belongs to the said Police Station where FIR is lodged; therefore, the investigation cannot be assigned to him, as per provision of Rule 25.1 of Police Rule 1934.
 (j), (k)
 (l) It is not proper for police officer, who is complainant, to investigate the case, as a case reported as State V Bashir Ahmed and others PLD 1997 Supreme Court 408, wherein it held as:-
 “It could hardly be expected that a police officer, who is heading a raiding party and is a witness, also becomes the complainant and loges an FIR against the accused, ,and then becoming an Investigation Officer of the same case, will comply with the aforesaid Police Rule. In the circumstances, the practice of the seizing officer or the head of a police party who is also a witness to the crime becoming or being nominated as an Investigating Officer of the same case should be avoided and if any other competent officer is available in the police station, he may be nominated as the Investigating Officer rather than the head of the Police Party. As observed, Investigating Officer is an important witness for the defence also and in case the head of the police party also becomes the Investigating Officer, he may not be able to discharge his duties as required of him under the Police Rules.”*

9. In another judgment reported as **2018 P.Cr.L.J. 590, (Rashid Hussain Vs. The State)**, the Hon’ble Lahore High held as under:-

“The above provision does not include C .I.A. personnel, therefore, they have no power to investigate a cognizable offence and the investigation so conducted by Nasir Mehmood S.I. of C.I.A. Staff was illegal. We have fortified our view from the dictum laid down by this Court in “Iftikhar Ahmad alias

Dani V. the State (PLD 1995 Lahore 606), wherein it has been held as under:-

"The members of the CIA Staff are subordinates of the Superintendent of Police of the District which S.P. has the powers of an Officer-in-Charge of a police station in view of the provisions of section 551 of the Cr.P.C. Therefore, the members of the CIA Staff, irrespective of their rank and status, can investigate, cases only when they have been entrusted to them by an Officer-in-Charge of the Police Station to whom they are subordinate i.e. in case of CIA Staff, the S.P. of the District. Therefore, no member of the CIA Staff has any authority or power to investigate a case of their own motion in the absence of such an investigation having been entrusted to him by the S.P. of the District as abovementioned."

10. From above, it has become clear that the instant FIR was lodged and processed by the CIA Staff, which is not warranted under the Police Rules as well as the dictums laid down by the superior courts of the country. In this view of the matter, case of the petitioner has become one of the further inquiry.

11. For what has been discussed above, the instant bail petition is allowed, petitioner (Hameed Ullah) is admitted to post-arrest bail subject to furnishing bail bonds in the sum of Rs.100,000/- (Rupees One Lac) with one surety in the like amount to the satisfaction of the learned Trial Court.

14. Needless to mention that this is tentative assessment for the purpose of this petition only, which shall not affect/influence the trial of this case in any manner.

(MORSIN AKHTAR KAYANI) (FIAZ AHMAD ANJUM JANDRAN)
JUDGE JUDGE