

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

Criminal Misc. No. 831-B/2020

Aftab Khan

Versus

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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27.07.2020	Mr. Taj Muhammad Shafi, learned Advocate for the petitioner. Mr. Zohaib Hassan Gondal, learned State Counsel with Munir Khan, SI/IO.
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FIAZ AHMAD ANJUM JANDRAN, J. Through the instant petition under Section 497 Cr.P.C, the petitioner {Aftab Khan} seeks post arrest bail in F.I.R. No.230, dated 23.04.2020, registered under Sections 9-C and 15 of the Control of Narcotics Substances Act, 1997, at Police Station Golra Sharif, Islamabad.

2. According to the allegations set-forth in the FIR, on the basis of spy information, on 23.04.2020 at about 7:00 p.m. a raiding party of the Police Station Golra Sharif, Islamabad intercepted the present petitioner at Chungi No.26 behind PSO Petrol Pump and in consequence, from his possession, 1050-grams of heroin was recovered.

3. Learned counsel for the petitioner contends that the petitioner is innocent and has falsely been implicated in the instant case; that there is a violation of Section 103 Cr.P.C. as the place of occurrence is thickly populated area but no private witness has been associated with the recovery proceedings; that the case of the petitioner falls within the parameters of borderline criteria; that the chemical examiner report is awaited and petitioner is first offender, therefore, is entitled for the grant of bail.

4. Conversely, the learned State Counsel contends that petitioner was caught red-handed by the police while he was in possession of 1050 grams heroin; that investigation has been completed and challan has also been submitted in the Court, therefore, he is not entitled to the concession of bail.

5. Arguments heard, record perused.

6. Tentative assessment of the record reveals that 1050 grams heroin was recovered from the possession of the petitioner, which is a borderline case and is marginally exceeds 1000 grams. In such like cases, the Hon'ble Supreme Court of Pakistan granted bail on the basis of borderline case reported as 2020 SCMR 350 (Aya Khan and another V. The State) and another judgment reported as PLJ 2018 SC 812 (Saeed Ahmed V. The state etc), wherein 1350 grams substance recovered marginally exceeds 1 K.G. and benefit of bail was extended to the accused.

7. The perusal of record further reveals that 1050 grams heroin was recovered from the petitioner/ accused on 23.04.2020 and samples separated from it for chemical analysis were sent on 29.04.2020 but the report of Chemical Examiner is still awaited. Non-availability of Chemical Examiner report in respect of contraband heroin allegedly recovered makes the case of the petitioner/accused one of further inquiry and falls within the ambit of subsection (2) of Section 497 Cr.P.C, which entitles him to the concession of bail on this ground too. It was held in case reported as 2014 YLR 849 (Peshawar) (Shahzad Khizar Hayat V. The State) that "non

availability of such report made the case against accused one of further inquiry”.

8. For aforementioned reasons, the instant bail petition is allowed, petitioner (Aftab Khan) 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.

9. 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.

(MOHSIN AKHTAR KAYANI)
JUDGE

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

A.R.ANSARI