

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.106-B/2020

Shoaib Khan

Versus

THE STATE.

Petitioner by: Mr. Shanzeb Khan, Advocate.

State by: Mr. Shahid Zafar, Special Prosecutor, ANF.
Kh. Faizan, S.I.

Date of Hearing: 27.02.2020.

LUBNA SALEEM PERVEZ; J. Through instant petition, Petitioner Shoaib Khan son of Muhammad Ulfat, seeks post arrest bail under section 497 Cr.P.C, in case FIR No.224/2019, dated 19.11.2019, for offence under section 9-C CNSA, registered at Police Station, ANF/RD North Rawalpindi.

2. The facts, as per FIR are that Petitioner along with his brother was arrested on spy information from Street No.48, Sector F-17, Islamabad and on personal search 1100 gram heroin in blue colored shopping bag wrapped in *khaki* colour solution tape was recovered from the accused/petitioner, out of which 10 grams heroin was separated as sample and sent for chemical examination, whereas, the remaining packet was sealed and handed over to concerned officials.

3. Petitioner before filing this bail application before this Court also applied for post arrest bail before the learned D/Judge, Special Courts, (CNS), Islamabad, who vide order dated 30.01.2020 declined the same. Hence, present criminal miscellaneous petition for post arrest bail.

4. Learned counsel for the Petitioner, inter-alia, submitted that the accused is a juvenile and according to his birth certificate his date of birth is 25.10.2002 (birth certificate is placed on record). Learned Counsel submitted that no private witnesses were involved though Petitioner was arrested from a thickly populated area and that he is no more required for further investigation; that he is a first offender having no previous criminal history and is incarcerated from the date of his arrest i.e. 19.11.2019. Learned Counsel lastly contended that in view of the

fact that he is below the age of 18 years, therefore, concession of bail may be granted on compassionate grounds.

5. Learned Special Prosecutor, ANF along with S.I, in attendance, submitted the case record and contended that sample of the narcotic substance was sent for chemical examination within the prescribed time, and the challan has already been completed on 17.12.2019. It was further submitted that accused petitioner is not entitled for bail as he is directly involved in offence.

6. We have heard the learned Counsel for the parties as well as learned Special Prosecutor, ANF and also perused the record submitted by S.I.

7. Perusal of the birth certificate furnished by the learned Counsel for the Petitioner reveals that the Petitioner is a juvenile below 18 years of age which fact is not denied by the Respondents. As per FIR the heroin recovered from the Petitioner is 1100 grams when it was weighed and it seems that it has been weighed along with the shopping bag wrapped with solution tape, and if its parcel is separated from the substance/heroin it may reduce its weight and attract the provisions of section 9-B of the CNSA, Act, 1997, therefore, it is a borderline case between clauses 9-B and 9-C of the CNSA, Act, 1997 and it has been the consistent view of the superior Courts that in cases where recovery of narcotic substance does not exceed the limit between 900 to 1500 grams the case is considered to be of borderline between clauses (b) and (c) of section 9 of Control of Narcotic Substances Act, 1997, therefore, invariably in all cases applicants have been admitted to bail. In this regard, guidance can be sought from the cases of **Liaqat Ali alias Liaqi Vs. The State and another (2020 YLR Note 20)**, **Lal Bux Vs. The State (2017 MLD 1164)**, **Wajid alias Waji Vs. The State (2016 PCr.LJ 831)**, **Muhammad Afzal Vs. The State (2012 MLD 220)**, **'Ayaz v. The State' (2011 PCr.LJ 177)**, **'Mehboob Ali v. The State' (2007 YLR 2968)**, and **'Taj Ali Khan v. The State' (2004 YLR 439)**.

8. Moreover, the PWs are officials of ANF, whereas, no private witness has been associated at the time of arrest of Petitioner and recovery of narcotic substance thus, it is a case of further inquiry and therefore, as per principles settled by Hon'ble Supreme Court of Pakistan in case titled as **Amir Zeb vs. The State" reported as (PLD 2012 SC 380)** and **Ateeb Ur Rehman Vs. The State reported as (2016 SCMR 1424)**, petitioner, in our view, is entitled for bail after arrest. Record submitted by the Sub-Inspector, ANF reveals that challan has been completed and now the Petitioner is no more required for

further investigation, who is continuously in custody since the date of his arrest and no useful purpose would be served if he is kept behind the bars for an indefinite period.

9. In view of the above, we allow the petition and admit the Petitioner to bail subject to furnishing of surety bonds in the sum of Rs. 1,00,000/- (One Lac) with one surety in the like amount to the satisfaction of learned Trial Court.

10. It is made clear that the observations made hereinabove, being tentative in nature, shall not prejudice the case of either party.

(MOHSIN AKHTAR KAYANI)
JUDGE

(LUBNA SALEEM PERVEZ)
JUDGE

Adnan/-