

Form No: HCJD/C-121

**ORDER SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**

**JUDICIAL DEPARTMENT**

**Criminal Misc. No. 857-B of 2021**

Muhammad Kamran

Versus

The State

<b>S.No. of order/ proceeding</b>	<b>Date of order/ proceeding</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
(02)	02.09.2021	Mufti Muhammad Awais Ali, Advocate for the petitioner / accused. Syed Shahbaz Shah, State Counsel. Asif Ali, S.I.

**TARIQ MEHMOOD JAHANGIRI, J.-**

Through the instant petition, the petitioner seeks bail after arrest in case F.I.R. No. 383/2021, dated 25.07.2021, offence under sections 9-B Control of Narcotic Substances Act (CNSA) and 186/353 P.P.C, registered at police station Lohi Bher, Islamabad.

02. It is alleged that the petitioner was apprehended by the local police on spy information and from his possession ice weighing 215 grams was recovered, hence the instant FIR.

03. Learned Counsel for the petitioner /

accused contends that petitioner / accused has falsely been implicated in the case by local police with malafide intentions; there is no apprehension of petitioner's absconding or tampering with the prosecution evidence, if he is enlarged on bail; offence does not fall under the prohibitory clause of Section 497 Cr.P.C; investigation in the case has been completed; report of the chemical examiner is awaited; nothing has been recovered from the present petitioner on spot; recovery, if any, effected from the petitioner / accused is planted one; no single independent witness of the occurrence is available which makes case of the petitioner / accused one of further inquiry, hence the petitioner / accused is entitled for grant of bail after arrest.

04. Conversely, learned State Counsel has vehemently opposed the bail petition and has stated that ice has been recovered from possession of the petitioner / accused; no enmity of police is on the record due to which the petitioner / accused is involved in this case, hence, he is not entitled to the

concession of bail.

05. We have heard the arguments advanced by learned counsel for the petitioner / accused, learned State Counsel for the state and perused the record with their able assistance.

06. The maximum punishment provides for the offence under Section 9-B Cr.P.C is seven year, and shall also be liable to fine.

It is admitted that offence does not fall under the prohibitory clause of Section 497 Cr.P.C. Reliance is placed upon the cases reported as **2020 SCMR 1258, 2020 SCMR 717, 2017 PLD 733, 2016 SCMR 1439 and 2011 SCMR 1708;** wherein it is held that:

***"Where a case fell within non prohibitory clause of section 497 Cr.P.C. the concession of granting bail must be favorably considered and should only be denied in the exceptional circumstances."***

07. Report of chemical examiner is still awaited which makes case of the petitioner / accused one of further inquiry. Reliance is placed on a case titled as "**Saeed Ahmed Vs. State through P.G. Punjab and**

**another” (PLJ 2018 SC 812)**, wherein bail after arrest of the accused, who was found in possession of 1350 grams of *chars* was allowed by the Hon’ble Supreme Court.

08. In another case titled as “**Abbas Raza Vs. The State through P.G. Punjab and other” (2020 SCMR 1859)**, accused found in possession of 1300 grams of contraband was allowed bail by the Hon’ble Supreme Court. It has also been held by the Hon’ble Supreme Court, that:

***“The liberty of a person is a precious right which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973. The denial of the same should be such which can establish the guilt of the accused without second thought”.***

09. It is well settled principle of law that while deciding the bail application, before recording of evidence in the trial Court, only tentative assessment is to be made by the Court and it is not permissible to go into details of evidence in one way or the other that might prejudice the case of either party. In this regard reliance is placed upon

the cases reported as **PLD 94 Supreme Court 65, PLD 94 Supreme Court 88, 2021 SCMR 111 and 2020 SCMR 937.**

10. Investigation in the case has been completed; petitioner / accused is previously non-convict, no more required by the police for further investigation. Report of chemical examiner is still awaited. Fair and speedy trial is one of the fundamental rights of the petitioner; no moral and legal compulsion exists to keep him behind the bars for an indefinite period which amounts to punishment without trial.

11. We do not find this to be a case where bail should be refused as an exception. Ultimate conviction and incarceration of guilty accused can repair the wrong caused by mistaken relief of bail after arrest but no satisfactory reparation can be offered to the accused for his unjustified incarceration if he is acquitted ultimately.

12. A tentative assessment of record shows that present petitioner has made out a case of further inquiry as envisaged under

Section 497(2) Cr.P.C.

13. In view of above, instant petition is accepted and the petitioner is admitted to bail subject to furnishing bail bonds in the sum of **Rs. 1,00,000/- (Rupees One Hundred Thousand)** with one surety in the like amount to the satisfaction of learned trial Court.

14. Needless to mention that, this is a tentative assessment which shall not affect the trial of case in any manner.

**(MIANGUL HASSAN AURANGZEB) (TARIQ MEHMOOD JAHANGIRI)**  
**JUDGE JUDGE**

Bilal /-