

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

**Criminal Misc. No. 872-B/2020**  
**Har Badshah**  
**Versus**  
**The State, etc**

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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05.08.2020	Mr. Muhammad Ilyas Khan, Advocate for the petitioner. Mr. Hasnain Haider Thaheem, learned State Counsel with Talat SI.
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**FIAZ AHMAD ANJUM JANDRAN, J.** Through the instant petition under Section 497 Cr.P.C, the petitioner, (Har Badshah) seeks bail after arrest in FIR No.339, dated 12.06.2020, registered under Section 9-C of the Control of Narcotics Substances Act, 1997, at Police Station Tarnol, Islamabad.

2. According to the allegations set-forth in the FIR, on 12.06.2020 at about 11:40 am, Talat Mehmood SI along with other police officials was on patrolling duty near Chungi No.26, when a person on seeing the police party tried to escape but was apprehended; on interrogation the said person disclosed his name as Har Badshah (petitioner) and on search 1150-grams of heroin was recovered from his possession.

3. Learned counsel for the petitioner contends that case of the petitioner falls within the parameter of borderline criteria; that the report of chemical examiner is awaited; that the petitioner is behind the bars since his arrest i.e. 12.06.2020 and the trial is not in sight, therefore, entitled to the concession of bail. Learned counsel fortified

his submissions by placing reliance upon case laws reported in 2020 SCMR 350; 2016 PCr.LJ 1315 and 2014 YLR 849.

4. Conversely, the learned State Counsel contends that petitioner was caught red handed with 1150 grams heroin which falls within the ambit of prohibitory clause of Section 497 Cr.PC; that the challan has been submitted in the Court on 24.06.2020 and the trial is likely to commence, therefore, is not entitled to the concession of bail.

5. Arguments heard, record perused.

6. The quantity of recovered substance i.e. 1150 grams heroin marginally exceeds 1000 grams and falls within the category of borderline criteria. It is not mentioned in the FIR as to whether it was net or gross weight of the narcotics. The Hon'ble Supreme Court of Pakistan granted bail on the basis of borderline criteria. 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. Perusal of record further reveals that the alleged contraband was recovered from the petitioner on 12.06.2020 while sample was sent to the Chemical Examiner on 15.6.2020 but the Investigating Officer, present in the Court, states that the report of chemical examiner is awaited. Non-availability of said report makes the case of the petitioner arguable for the purpose of bail, hence the case of the petitioner requires further probe 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 Vs. The State) that “*non availability of such report made the case against accused one of further inquiry*”.

8. Learned State Counsel submits that present petitioner is previously having no criminal record of any nature, this factor also goes in his favour.

9. Consequently, the instant bail petition is allowed, petitioner (Har Badshah) 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.

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

(MOHSIN AKHTAR KAYANI)  
JUDGE

(FIAZ AHMAD ANJUM JANDRAN)  
JUDGE

Imran