

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

**Criminal Misc. No. 220-B of 2022**

Usman Javed Masih

***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)	15.03.2022	Mr. Iftikhar Ahmad Bajwa, Advocate for the petitioner / accused. Mr. Fahad Ali, State Counsel.

**TARIQ MEHMOOD JAHANGIRI, J.-**

Through the instant petition, the petitioner seeks bail after arrest in case F.I.R. No. 1061/2021, dated 31.12.2021, offence under Section 9-C, 15 CNSA, 1997, registered at Police Station Karachi Company, Islamabad.

02. It is alleged that on spy information the petitioner / accused was apprehended at the spot, and police has recovered heroin weighing 1137 Grams from his possession, hence the instant FIR.

03. Learned Counsel for the petitioner /

accused contends that petitioner / accused has falsely been implicated in the case by the police officials with malafide intentions; there is no apprehension of petitioner's abscondence or tampering with the prosecution evidence, if he is enlarged on bail; report of Chemical Examiner is still awaited; nothing has been recovered from him at the spot; the recovery, if any, effected from the petitioner / accused is planted one; there is no single independent witness of the occurrence available which makes case of the petitioner / accused one of further inquiry; case of the petitioner / accused is a border line case of 9-B & 9-C of CNSA, hence he is entitled for grant of bail after arrest.

04. Conversely, learned State Counsel has vehemently opposed the bail petition and stated that accused / petitioner was apprehended at the spot; huge quantity of heroin was recovered from his possession; no enmity of police is on the record; offence

falls under prohibitory clause of Section 497 Cr.P.C. 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 on behalf of State and record has been perused with their able assistance.

06. Report of chemical examiner is still awaited and the alleged recovered contraband marginally exceeds 01-kilogram, so the petitioner / accused is not likely to be awarded maximum sentence provided by the statutes, the petitioner / accused is in jail and trial is not likely to be concluded in near future. Reliance is placed upon 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 of Pakistan.

07. 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 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".***

08. It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as **Aya Khan and another Vs. The State (2020 SCMR 350)**, that:

***"Without discussing the merits of the case lest it prejudice the case of one or the other side, suffice it to say that in the FIR or in the recovery memo, no where it is stated that whether it was net or gross weight of the narcotics and in this eventuality it becomes a border line case between subsections (b) and (c) of section 9, C.N.S.A., 1997. Thus the benefit of doubt in this aspect shall go to***

***the accused. In view of the principle of law laid down in the case of Manzoor and 4 others v. The State (PLD 1972 SC 81)” (Emphasis added), accused having possession of 1100 grams of chars was granted bail.***

09. It is an admitted position that only 1137 grams heroin was allegedly recovered from the petitioner / accused. It has been consistent view of the superior Courts as well as this Court that in cases where recovery of narcotic substance does not exceed the limit between 900 to 1500 grams, the case being 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 taken from the cases titled as **Wajid alias Waji Vs. State (2016 PCr.LJ 831)**, **Ali Hassan @ Hasan Vs. State (2014 YLR 188)**, **Asif Ali Vs. State (2013 YLR 1241)** and **Ayaz Vs. State (2011 PCr.LJ 177)**, wherein

recovery of substance does not exceed the limit between 900 to 1500 grams, it has been held by the superior Courts that the case being of borderline between clauses (b) and (c) of Section 9 of CNS Act, 1997 and invariably in all cases applicants have been admitted to bail.

10. In a case titled as **Jamal-ud-Din alias Zubair Khan Vs. The State (2012 SCMR 573)**, the Hon'ble Supreme Court of Pakistan while granting bail after arrest to accused carrying 04-kilograms of Charas has held that:

***"Needless to say that the Court while hearing, a petition for bail is not to keep in view the maximum sentence provided by the Statute but the one which is likely to be entailed in the facts and circumstances of the case. The fact that petitioner has been in jail for three months yet commencement of his trial let alone its conclusion is not in sight, would also tilt the scales of justice in favour of bail rather than jail."***

11. 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.**

12. Investigation in the case has been completed. Report of chemical examiner is not available. The petitioner / accused is previously non-convict, no more required for further investigation; he is behind the bars without any progress in the trial. 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.

13. 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.

14. 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.

15. In view of above, instant petition is accepted and the petitioner / accused 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.

16. Needless to mention here that observations, if any, made hereinabove are tentative in nature and would not influence the trial Court while deciding case of the accused on merits. It is made clear that in



case the accused, during proceedings before the trial Court, misuses the concession of bail or does not co-operate for conclusion of the trial, then the trial Court would be competent to cancel the bail of petitioner / accused without making any reference to this Court.

**(BABAR SATTAR)**  
**JUDGE**

**(TARIQ MEHMOOD JAHANGIRI)**  
**JUDGE**

*Bilal /-*