

Form No: HCJD/C-121.
ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No. 490-B of 2021

Rehmat Gul

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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31.05.2021. Ms. Huma Jamil Babar, Advocate for the petitioner.
Mr. M. Sohail Khurshid, State Counsel.
Mian Muhammad Shahbaz, S.I, P.S Ramna, Islamabad.

BABAR SATTAR, J.- Through this petition, the petitioner has applied for post arrest bail in case F.I.R. No.304/2021, dated 01.05.2021, registered under Section 9-C of the Control of Narcotic Substances Act, 1997 (**"CNSA"**) at Police Station Ramna, Islamabad.

2. The facts stated in the FIR lodged on the complaint of Mr. Akhtar Zaman, S.I briefly are that on 01.05.2021 the complainant along with other police officials was on patrolling duty and received information from an informer that a young man who is a drug paddler is dealing with drugs near the graveyard in G-12, within the territorial jurisdiction of Police Station Ramna,

Islamabad. That on seeing the police party a person started running. When apprehended, he was identified as Rehmat Gul son of Saqib Akhtar and was in possession of 1110 grams of heroin wrapped in a brown packet being carried in a blue shopping bag.

3. Learned counsel for the petitioner contended that the petitioner has been falsely implicated in the instant case and has no previous criminal record of any sort. She contended that the alleged recovery of 1110 grams of heroin constituted a border line case between sections 9-B and 9-C of CNSA. She relied on Ateebur Rehman Vs. The State (2016 SCMR 1424), which involved recovery of 1014 grams of heroin and Aya Khan and another Vs. The State (2020 SCMR 350), which involved recovery of 1100 grams of heroin, and bail was granted by the august Supreme Court in both cases. She further submitted that the chemical examiner's report was still pending and it could not be decisively concluded at this stage that the recovered substance was narcotics.

4. The learned State Counsel contended that the petitioner was caught red-handed in possession of 1110 grams of heroin. That the

petitioner was sent to judicial lock up on 02.05.2021. That a sample from the recovered heroin was sent for chemical examination on 07.05.2021, and the report of the chemical examiner was still awaited. He further submitted that the challan had already been submitted in the trial court on 25.05.2021 and in view of the recovery of substantial amount of narcotics, the petitioner is not entitled to the concession of bail.

5. In view of the fact that the alleged narcotic substance was packed in a brown packet being carried in a plastic shopping bag, it cannot be determined with certainty at this stage as to whether stated weight includes the weight of the bags and whether in view of the quantity of the narcotic substance recovered, this case falls within the scope of section 9-B or 9-C of CNSA. In border line cases that may fall either in sections 9-B or 9-C of CNSA, the benefit of doubt is ordinarily given to the accused and bail is granted as held by the august Supreme Court in Ateebur Rehman Vs. The State (2016 SCMR 1424) and Aya Khan and another v. The State (2020 SCMR 350). Reliance can also be placed on the following cases:

- (i) Ayaz Vs. The State (2011 PCr.LJ 177)
- (ii) Taj Ali Khan Vs. The State (2004 YLR 439)
- (iii) Gulab Hussain Vs. The State (2009 YLR 189)
- (iv) Mehboob Ali Vs. The State (2007 YLR 2968)
- (v). Naimatullah and another Vs. The State (2017 MLD 1097 Balochistan)
- (vi) Muhammad Shafique Vs. The State (2016 PCr.LJ 1315 Islamabad)
- (vii) Wajid alias Waji Vs. The State (2016 PCr.LJ 831 Sindh)

6. Further, samples from the alleged narcotics substance recovered from the petitioner were not sent for chemical analysis within the prescribed period of seventy two hours, and such delay is also considered a ground for further inquiry. Reliance is placed on Muhammad Shafique Vs. The State (2016 PCr.LJ 1315 Islamabad). As the report of the chemical examiner is still pending, it cannot be determined beyond reasonable doubt that the substance recovered from the accused/petitioner is indeed a narcotic substance. Incomplete challan under section 173 of Cr.P.C has been submitted before the learned trial court and at this stage there is nothing on record to suggest that the petitioner, who has no previous criminal record, may abscond or tamper with the evidence if released on bail. And as the

investigation stands completed and the petitioner is in the judicial custody, keeping him incarcerated would not serve the ends of justice.

7. In these facts and circumstances, this petition is allowed, subject to the petitioner furnishing bail bonds in the sum of Rs.200,000/- (rupees two hundred thousand), with one surety in the like amount to the satisfaction of the learned Trial Court.

8. Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which ought not prejudice the proceedings before the learned trial court.

(MOHSIN AKHTAR KAYANI)
JUDGE

(BABAR SATTAR)
JUDGE