

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No. 204-B of 2020.

Shamshad Ali.
VERSUS
The State, etc.

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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30.03.2020. Mr Muhammad Ilyas Khan, Advocate for the petitioner.
Mr Dawood Niazi, State Counsel.
Mr Shafiq, SI with record.

The petitioner Shamshad Ali son of Shamas Khan has sought post arrest bail in case, F.I.R. No. 491, dated 20.12.2019, registered under section 9-C Control of Narcotics Substance Act (CNSA), 1997, at Police Station Ramna, Islamabad (hereinafter referred to as the "**FIR**").

2. Brief facts, as alleged in the FIR are that pursuant to an information, police officials intercepted a vehicle. The petitioner was driving the vehicle. The search of the petitioner led to recovery of 'charas', weighing 2000 grams and 20 grams of Amphetamine (ice). Hence the instant petition.

3. The learned counsel for the petitioner has contended that; no incriminating material was recovered from the petitioner; recovery if any is fake and planted; there is no evidence against the petitioner; the petitioner is innocent and has been falsely involved in the instant case; the petitioner has not committed any offence; the petitioner has no criminal record; the petitioner has been involved in the instant case with malafide intention and ulterior motives; offence does not attract against

the petitioner; the complainant is the Investigating Officer of the case; section 103 of Cr.P.C. has been violated, as no witness from the public was associated at the time of the alleged recovery; report of chemical examiner is still awaited; the petitioner has been incarcerated for more than three months; the allegation against the petitioner is false and frivolous; only 5/5 grams of charas and 1 gram of amphetamine (ice) was separated for chemical analysis from different pieces; story as narrated in the FIR is concocted; investigation qua the petitioner has been completed and he is no more required for the purposes thereof; incomplete report under section 173 of Cr.P.C. has been submitted before the learned trial Court; there are sufficient grounds for further inquiry into the guilt of the petitioner; hence prayed for the grant of post arrest bail.

4. The learned State Counsel appeared alongwith Shafiq S.I. and opposed the bail. It is contended that; the petitioner is nominated in the FIR; specific role has been attributed to the petitioner; however, it is admitted that report of chemical examiner has not been submitted as yet and incomplete report has been submitted before the learned trial Court; it is also admitted that the petitioner has no previous record; the petitioner was arrested from the crime scene and substantial recovery of contraband substances has been effected from his possession; the petitioner is part of an organized syndicate which sells narcotic substance; the petitioner was apprehended at the crime scene; hence, urges for dismissal of the instant bail application.

5. The learned counsel for the petitioner and the learned State Counsel has been heard and record perused with their able assistance.

6. Perusal of the record reveals that the recovered narcotic substance i.e. charas was in the form of pieces alongwith twenty grams of amphetamine (ice). The report of Chemical Examiner is still awaited. It has not been denied by the prosecution that samples from each piece was neither taken nor sent for examination. Whether or not the law enunciated by the august Supreme Court in the case of "*Ameer Zeb versus The State*"[P.L.D. 2012 Supreme Court 380] in relation to taking of samples and forwarding the same for chemical examination is attracted requires further probe. It has been held that samples are required to be taken from each packet/cake/slab and, thereafter, separately sealed for forwarding the same for analysis by the Chemical Examiner. In case samples are not taken from each cake/slab and sealed separately, then the same cannot be treated as representative samples and that it would be unsafe to rely on mere word of mouth of the prosecution witnesses regarding the substance. The august Supreme Court has cautioned that in such a case *"there are chances of miscarriage of justice on account of exaggeration by the investigating agency. Such minimum standards of safety are even otherwise necessary for safeguarding fundamental rights of citizens regarding life and liberty which could not be left at the mercy of the verbal assertions of police officers not supported by independent evidence provided by the Chemical Examiner"*. The petitioner was arrested on 20.12.2019 and since then has been incarcerated. Investigation qua the petitioner has been completed and, therefore, he is no more required for the purposes thereof. His further incarceration would not serve any useful purpose. Incomplete report under section 173 of Cr.P.C. has been submitted before the learned trial Court and trial. Charge has been framed on 18.02.2020 but not a single witness has been recorded as yet. Furthermore, report of chemical examiner is not annexed with the report

to ascertain whether the recovered contraband substance was narcotics. There is nothing on record to show that the petitioner has a criminal record. The case of the petitioner requires further probe. In the circumstances, we are of the opinion that a case for extending the concession of bail is made out.

7. It has been aptly observed by the august Supreme Court in the case of "*Manzoor and 04 others versus The State*" reported as [PLD 1972 S.C. 81] as follows.-

"The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run".

In the light of the facts and circumstances of the present case, refusal of bail will tantamount to punishing the petitioners.

8. In the circumstances as mentioned above, this petition is ***allowed***, subject to furnishing bail bonds in the sum of Rs.500,000/- (Rupees five hundred thousand only) with one surety in the like amount to the satisfaction of the learned trial Court.

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

(MOHSIN AKHTAR KAYANI)
JUDGE

(CHIEF JUSTICE)