

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

**Criminal Misc. No. 956-B/2020**

**Nayyar Iqbal**

**Versus**

**The State**

of edings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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14.09.2020     Sheikh Yasir Ali Jawwad, learned Advocate for  
petitioner.  
Mr. Husnain Haider Thaheem, learned State Counsel.  
Abdul Majeed, SI with record.

**FIAZ AHMAD ANJUM JANDRAN, J.** Through  
the instant petition under Section 497 Cr.P.C,  
petitioner (Nayyar Iqbal), seeks post-arrest bail in  
F.I.R No 459, dated 02.08.2020, registered under  
Section 9-C of the Control of Narcotics  
Substances Act, 1997, at Police Station Koral,  
Islamabad.

02. Briefly, the allegations set-forth in the F.I.R  
are that on 02.08.2020, at about 7:15 p.m, when  
the police staff of P.S. Koral was on routine  
patrolling, petitioner was apprehended on the  
basis of spy information from the back of Shell  
Petrol Pump Alipur with a shopping bag containing  
1430 grams Charas.

*FWD*

03. Learned counsel for the petitioner  
contends that the case of the petitioner falls within  
the parameters of borderline criteria; that there is  
delay of about one month in sending sample parcel  
for chemical analysis and that it is also not clear  
whether the recovered narcotic was Charas or  
Garda Charas, therefore, petitioner is entitled to  
the concession of bail. Learned counsel fortified  
his submissions by placing reliance upon case law  
reported as **2016 P.Cr.L.J. 1315.**

04. Conversely, learned State Counsel contends that petitioner was caught red handed by the police while he was in possession of 1430 grams charas; that challan has been submitted in the Court and that petitioner is previous record holder, therefore, not entitled to the concession of bail.

05. Arguments heard, record perused.

06. Perusal of record reveals that 1430 grams charas was recovered from the petitioner/accused on 02.08.2020 and sample separated from it for chemical analysis was sent to the Chemical Examiner on 03.09.2020 after the delay of one month. This Court in **“Muhammad Shafiq V. the State” (2016 P.Cr.L.J. 1315)** has held that *“lapse on the part of the police in sending the contraband substance for chemical analysis within the stipulated period has made the case of the accused that of further inquiry.”*

07. Moreover, the report of Chemical Examiner is still awaited which, too, makes the case of the petitioner/accused one of 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”*.

08. It is by now well settled that an accused person cannot be left at the mercy of the prosecution to remain in jail for an indefinite period. The liberty of an individual has been

guaranteed by the Constitution and to have a speedy trial is an inalienable right of every accused person. The Hon'ble Apex Court in case of **"Imtiaz Ahmed Vs The State through Special Prosecutor, ANF (2017 S C M R 1194)** held that:-

*"17. To have a speedy trial, is the fundamental right of accused being universally acknowledged. Under the Criminal Procedure Code, smooth methodology and scheme for speedy trial, is provided whether it is held by the Session Court or Magistrate, in recognition of the said right of an accused person. This principle shall apply more vigorously to the trials before Special Courts, constituted under the CNS Act, or any other special law so that unnecessary delay, much less shocking one in its conclusion is avoided in all circumstances. Any unreasonable or shocking delay in the conclusion of the trial, before Special Courts, like we are confronted with in the present case, would amount to denial of justice, or to say, denial of fundamental rights, to the accused, of speedy trial."*

09. The case of the petitioner as per F.I.R is recovery of 1430 grams charas, which is a borderline case and is marginally in excess of 1 kg quantity. In such like cases, Hon'ble Supreme Court of Pakistan granted bail on the basis of borderline criteria and 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 was recovered which marginally exceeds 1 kg and the benefit of bail was extended to the accused.

10. Consequently, for what has been discussed above, the instant bail petition is **allowed**, petitioner (Nayyar Iqbal) is admitted to post-arrest bail subject to furnishing of bail bonds in the sum of **Rs.100,000/-** (Rupees One Lakh) with one surety

in the like amount to the satisfaction of the learned Trial Court.

11. 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) (FIAZ AHMAD ANJUM JANDRAN)  
JUDGE JUDGE

A.R. ANSARI