

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

**Criminal Misc. No. 848-B/2020**  
**Hassan Khan**  
**Versus**  
**The State**

<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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27.07.2020	Mr. Israr-ul-Haq Malik, learned Advocate for the petitioner. Mr. Arif Riaz Butt, Special Prosecutor ANF Sheraz Inspector/I.O. PS RD ANF, Rawalpindi
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**FIAZ AHMAD ANJUM JANDRAN, J.** Through this Crl. Misc. petition, the petitioner has applied for post arrest bail in case FIR No.51, dated 03.06.2019, registered under Sections 9-C and 15 of Control of Narcotics Substances Act, 1997, at Police Station A.N.F./RD North, Rawalpindi

2. According to the allegation set-forth in the FIR, on 03.6.2020 Sheraz Sadiq Inspector alongwith other officials of ANF was busy in checking the vehicles coming from Peshawar side at Motorway Link Road, Islamabad. At about 17:00 hours, Mehran Car bearing No.LRS-409 white colour came from Peshawar side, which was stopped, in which three passengers and two children were present. On their disclosure, 2400 grams charas was wrapped in three packets were recovered from front doors of the car. 10/10 grams charas was separated from each packet for samples. Hence, this FIR.

3. Learned counsel for the petitioner contends that the prosecution story is false, frivolous and concocted one; that nothing was recovered from the possession of the petitioner; that bail of co-accused has already been granted

by this Court vide order date 24.6.2020, therefore, petitioner deserves the same treatment on the principle of consistency; that the petitioner is aged about 15 years, student of 8<sup>th</sup> class and being juvenile be entitled to the concession of bail.

4. Conversely, learned Special Prosecutor ANF has contended that petitioner is nominated in the FIR and was arrested at the spot with huge quantity of narcotics substance, therefore, he is not entitled to the concession of bail.

5. Arguments heard, record perused.

6. Tentative assessment of the record reveals that at the relevant time, present petitioner was not driving the vehicle, rather he was sitting on the front seat of the vehicle and in this respect, Hon'ble Supreme Court of Pakistan has held in a case reported as **2019 SCMR 1651 (Hussain Ullah V. State and another)**, it is held that when accused was arrested by the ANF, and was not driving the car nor any narcotic was recovered from his exclusive possession rather he was sitting on the rear seat of the car. Relevant para is reproduced here under:-

*"After hearing the learned counsel for the petitioner, learned Law Officer and perusal of available record, it has been observed by us that when the petitioner was arrested by the police, he was not driving the car nor any narcotic was recovered from his exclusive possession rather he was sitting on the rear seat of the car. Learned Law Officer has confirmed under instructions of the police officer present in Court that there is nothing on the record to connect the petitioner with the car. In these circumstances, the case of the petitioner becomes one of further inquiry falling within the ambit of section 497 Code of*

***Criminal Procedure. He is behind the bars since 16.3.2017 and nothing is to be recovered from him. In this backdrop, no useful purpose shall be served by keeping him incarcerated for an indefinite period.”***

7. Perusal of record further reveals that the alleged contraband was recovered from front doors of the car, which, at the relevant time, was being driven by co-accused Saif-ur-Rehman while the present petitioner was sitting on the front seat of the said vehicle. Another co-accused namely Mst. Sharafat Bibi was sitting at rear seat of the car alongwith her two children. Moreover, the alleged contraband has not been recovered from the direct possession of the petitioner and the factum of his conscious knowledge has yet to be determined at the trial after recording of evidence. In this respect reliance is placed on 2020 YLR Note 8 (Saida Gul V. The State), wherein it is held that:-

***“Perusal of record would reveals that the alleged contraband was recovered from secret cavities of the motorcar, which, at the relevant time, was being driven by the co-accused Abdur Rehman while the present petitioner was sitting with him on the front seat, thus, the prosecution has yet to prove that the petitioner had any link with the co-accused or not? Moreover, the alleged contraband has not been recovered from the direct possession of the petitioner and the factum of his conscious knowledge has also yet to be determined at the trial after recording of evidence. There is also nothing on record that petitioner is a previous convict or involved in such like cases. Petitioner is behind the bars since his arrest. Investigation in the case is complete and the petitioner is no more required for further investigation is complete and keeping him behind the bars would serve no useful purpose. Therefore, keeping in view the above facts and circumstances of***

*the case, this court is inclined to extend the concession of bail to the petitioner.”*

8. Record shows there is a joint recovery of 2400 grams charas from three accused, which was recovered from the front doors of the car and the recovery effected on the joint pointation is considered to be defective to the extent of present petitioner. In this regard, reliance is placed on case law reported in 2018 P.Cr.L.J. Note 100 (Malang Jan and another V. The State). Relevant para is as under:-

*“No doubt the petitioners are directly charged in the FIR and as alleged 3 KG of charas has been recovered from a wooden crate, on the Pointation of the present petitioners, but at the same time it is evident from the contents of FIR and the contents of recovery memo, that both the accused were in police custody in another case and were taken to the place of recovery. Recovery was effected on their joint Pointation, which is not admissible in evidence. Under the law joint recoveries are always considered defective. Wisdom could be drawn from the judgments reported in 1976 PCrLJ 1462, PLD 1989 Kr. 466, 1974 PCrLJ 501 and PLD 1997 SC 408.”*

9. The samples separated for analysis were sent to the chemical examiner on 04.6.2020, report whereof is still awaited. It was held in case reported as 2014 YLR 849 (Peshawar) (Shahzad Khizar Hayat V. The State) that “non availability of such report made the case against accused one of further inquiry”. Therefore, non-availability of Chemical Examiner report in respect of contraband charas allegedly recovered makes the case of the petitioner/accused arguable for the purpose of bail, hence the case of the petitioner/accused 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.

10. The petitioner also seeks bail on the ground of juvenile and in this regard, relied upon Form "B" and according to that date of birth of the petitioner is 29.3.2005 as well as per School certificate his date of birth was same and he is studying in class 8<sup>th</sup> in Govt. M.C. Boys Central Model High School, Millat Colony, Rawalpindi. Therefore, petitioner is also entitled bail on this ground of juvenile.

11. The aspect of juvenile at the time of its occurrence in the light of international prospects/ agreement signed by the Government of Pakistan regarding protection of children, warrants further leniency to the petitioner. Reliance is placed upon case law reported as 2019 P.Cr.L.J. 1176 (Islamabad) (Mst.Jamila V. The State).

12. Moreover, co-accused namely Mst. Sharafat Bibi has already been allowed bail by this Court vide order dated 24.06.2020. Role of the present petitioner, too, is not of driver of the vehicle from which contraband has been recovered , therefore, he is also entitled to the concession of bail on the principle of consistency.

13. For aforementioned reasons, the instant bail petition is allowed, petitioner (Hassan Khan) 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.

14. 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

A.R. ANSARI