

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

CRL. MISC. NO. 823-B of 2020.

Mst. Saira Bibi.
VERSUS
The State.

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
-------------------------------	--------------------	--

21.07.2020. Malik Muhammad Ajmal Khan, Advocate for the petitioner.
Dr Wasim Ahmad Qureshi, Special Prosecutor, ANF.
Mr Sheraz, Inspector/I.O. with record.

The petitioner Mst. Saira Bibi w/o Zahid Mehmood has sought post arrest bail in case, F.I.R. No. 68, dated 28.03.2019, registered under section 9-C and 15 Control of Narcotics Substance Act, 1997 (hereinafter referred to as the "***Act of 1997***"), at Police Station ANF(RD) North, Rawalpindi.

2. Brief facts, as alleged in the FIR are that pursuant to receiving information, officials of the Anti-Narcotics Force, arrested the present petitioner alongwith other co-accused/accomplice after 2000 grams of 'charas' was recovered from their possession. Hence the instant case.

3. The learned counsel for the petitioner has contended that; the latter is innocent and has not committed the alleged offence; story as narrated in the FIR is false, frivolous and vexatious; the petitioner has been incarcerated for about sixteen months; investigations qua the petitioner have been completed and she is no more required for the

purposes thereof; further detention of the petitioner will not serve any useful purpose; the petitioner has three babies who are with her in jail and during incarceration, she gave birth to a child; the case of the petitioner comes within the ambit of section 497(2) of Cr.P.C.; the petitioner has no criminal record; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; the petitioner has been falsely involved in the instant case; no incriminating material was recovered from the petitioner; this is a day light occurrence and the place of occurrence is a thickly populated area but no witness from the public was associated during recovery proceedings which is violation of section 103 of Cr.P.C.; the petitioner is not a hardened criminal; offence does not fall within the ambit of prohibitory clause of section 497 of Cr.P.C.; there is no evidence of sale / purchase of contraband substance; the case against the petitioner has been registered with malafide intention and ulterior motives; report under section 173 of Cr.P.C. has been submitted before the learned trial Court; there is no evidence against the petitioner; the petitioner is ready to furnish surety to the satisfaction of the Court; there appears no reasonable ground for believing that petitioner/accused has committed any offence; there are sufficient grounds for further inquiry into the guilt of the petitioner. Hence urges for the grant of post arrest bail.

4. The learned Special Public Prosecutor, ANF appeared alongwith Sheraz Inspector/I.O. and opposed the bail. It is contended that; the petitioner is nominated in the FIR; specific role has been attributed to the petitioner; recovery of 2000 grams of charas has been affected from the petitioner and the co-accused; report under section 173 of Cr.P.C. has been submitted before the learned trial Court; the agency

had no previous enmity with the petitioner; the officials are competent witnesses; hence, they have opposed the grant of bail.

5. We have heard the learned counsel for the petitioner and the learned Special Prosecutor, ANF and perused record with their able assistance.

6. A plain reading of the F.I.R. shows that the main accused in this case is the petitioner's husband. The latter had disclosed that he was engaged in the illegal business of narcotics and that the petitioner i.e. his wife was used by him to achieve his grave object. We have been informed that the petitioner has given birth to a child while being incarcerated. The role of the petitioner is indeed distinguishable from that of her husband i.e. the main accused and requires further probe. The petitioner has been incarcerated for almost sixteen months. Report under section 173 of Cr.P.C. has been submitted before the learned trial Court. Investigation qua the petitioner has been completed. Charge has been framed. The petitioner is no more required for further investigations. Her further incarceration will not serve any useful purpose. There is nothing on record to form an opinion that the petitioner may abscond or tamper with evidence if released on bail. 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 petitioner.

8. In the circumstances as mentioned above, this petition is ***allowed***, subject to furnishing bail bonds in the sum of Rs.1000,000/- (Rupees one million only) with one surety in the like amount to the satisfaction of 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.

(GHULAM AZAM QAMBRANI)
JUDGE

(CHIEF JUSTICE)

Asad K/*