

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

Criminal Misc. No. 749-B/2020

ASIM KHAN

Vs

The State, etc

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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16.06.2020	Mr. Sher Afzal Khan Jadoon, learned Advocate for the petitioner. Dr.Waseem Ahmad Qureshi, Special Prosecutor, ANF with Shehla Javaid, PS RD ANF, North,
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FIAZ AHMAD ANJUM JANDRAN, J. Through
the instant petition under Section 497 Cr.P.C, the
petitioner (Asim Khan), seeks his bail after arrest
in F.I.R. No.140, dated 12.07.2019, registered
under Sections 9-C and 15 of the Control of
Narcotics Substances Act, 1997, at Police Station
A.N.F./RD North, Rawalpindi.

2. According to the allegations set-forth in the
FIR, on the basis of spy information, on 12.07.2019
a raiding party of the ANF officials intercepted the
present petitioner and in consequence of its
search, 1200 grams opium, 275 grams heroin and
40 grams Amphetamine were recovered from him.

3. Learned counsel for the petitioner
contends that this is second bail petition of the
petitioner as his earlier bail petition was dismissed
by this Court vide order dated 02.10.2019 and trial
court was directed to conclude the trial within a
period of 07 months from the date of receipt of
copy of the order but the learned trial Court has
failed to conclude the trial despite direction of this
Court and still no progress has been made in trial
due to non-availability of the Judge Special Court

(CNS) as well as due to the global pandemic of COVID-19; that in view of quantity of recovered drugs, falls within the ambit of Section 9-B of CNSA and not Section 9-C of CNSA as no morphine was found in sample of opium, therefore, petitioner is entitled for the grant of bail.

4. Conversely, the learned Special Prosecutor ANF submits that the delay in conclusion of trial is due to non-availability of learned Presiding Officer of the Special Court and due to global pandemic of COVID-19; that now Court is functional and almost all witnesses are officials of the ANF, which be recorded as early as possible if a direction is issued for conclusion of the trial, then same will be complied with, therefore, petitioner is not entitled for the concession of bail.

5. Arguments heard, record perused.

6. That approximately four months, the learned Trial Court remained non-functional due to non-availability of the Judge Special Court and some other dates were granted due to global pandemic of COVID-19 and some dates were granted on the request of either side of the parties.

7. Cursory glimpse of record further reveals that on 11.3.2020, PW Abdul Razzaq was present but on the request of learned defence counsel matter was adjourned for 19.3.2020. On the said date PWs Azhar-ur-Rehman, Abdul Razzaq and Mazhar Ali were present but accused has not been produced before the Court and case was

adjourned to 06.4.2020. On 06.4.2020, accused were not produced from Jail due to lockdown and matter was adjourned for 22.4.2020. On 22.4.2020 and 11.5.2020, PWs were not present due to lockdown and case was adjourned for next date. On 02.6.2020, PW Mazhar Ali was present but due to non-availability of learned defence counsel, his statement was not recorded and matter was adjourned to 16.6.2020. In the meanwhile, accused file bail application before the learned Trial Court which was dismissed vide order dated 12.5.2020. Thereafter petitioner/accused filed the instant bail petition before this Court.

9. No fresh ground has been alleged for grant of bail while previous order of this Court dated 15.01.2020 clearly specified that conclusion of the trial shall be made within a period of seven months from the date of receipt of copy of the said order. As per bail refusing order dated 12.5.2020 of the learned Trial Court, said copy of the order was received on 15.01.2020 whereafter seven months period expires on 14.8.2020 while the instant application has been filed even before the expiry of said period i.e. 14.08.2020. Heavy quantity of narcotics substances had been recovered from the petitioner, in which statute provide capital punishment. Report of the FSL is also positive.

9. Consequently, for what has been discussed above, the instant bail petition is dismissed. However, while relying upon 2011 SCMR 1332 (Rehmat Ullah Vs. the State and another), the learned Trial Court seized with the matter is directed to conclude the trial within a period of three months from the date of receipt of copy of

this order under intimation through Deputy Registrar (Judicial) of this Court.

(MOHSIN AKHTAR KAYANI) (FIAZ AHMAD ANJUM JANDRAN)
JUDGE JUDGE

A.R. ANSARI