

ORDER SHEET
ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Criminal Misc. No.772-B /2020

Shamsher Ahmad
Vs.
The State

S.No. of order/ proceeding	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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01.07.2020	Mr. Musharaf Khan, Advocate for the petitioner. Mr. Zohaib Hassan Gondal, State Counsel. Mr. Bilal Ahmad, S.I., P.S. Shalimar.
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GHULAM AZAM QAMBRANI, J.:- The petitioner, namely Shamsher Ahmad S/o Muhammad Rauf, seeks post-arrest bail in case F.I.R No.172, dated 31.05.2020 registered under Section 9-C of the Control of Narcotic Substances Act, 1997, at Police Station Shalimar, Rawalpindi.

2. Briefly stated facts of the prosecution case are that on 31.05.2020, on the complaint of Sub-Inspector, Azhar Mehmood, F.I.R No.172/ 2020 was registered at Police Station Shalimar, Islamabad, wherein, it has been alleged that on the said day, at about 10:30 pm, complainant alongwith other police officials were on patrolling duty in the area of Sector F-11/3, Islamabad, falling within the territorial jurisdiction of Police Station Shalimar. On spy information, the petitioner/ accused was apprehended by the police and upon his personal search, blue color shopping bag carrying charas weighing 1180 grams was recovered, hence the above said F.I.R was lodged.

3. The petitioner applied for grant of post arrest bail before the learned Additional Sessions Judge-IV (West) Islamabad, which was dismissed vide order dated 10.06.2020 hence the instant bail petition.

4. The learned counsel for the petitioner has contended that the petitioner is innocent and has been falsely involved in the instant case with malafide intention; that the investigation qua the petitioner has been completed and he is no more required for the purposes thereof; challan has been submitted before the learned trial Court but there is no progress in the Trial. He further submits that if the recovery is presumed to be true even than it comes in borderline falls within the definition of Section 9 – B of CNSA, hence prayed for the grant of post arrest bail. Learned counsel for the petitioner placed reliance upon "*Muhammad Abid Farooq vs. The State and another*" (2015 P Cr.L J 224) and "*Ibrahim Vs. The State*" (2006 MLD 154).

5. Conversely, the learned State counsel vehemently opposed the bail petition and contended that; the petitioner was arrested red handed from the crime scene, the substantial contraband substance was recovered from his conscious possession; report under section 173 of Cr.P.C. has been submitted before the learned trial Court; the petitioner is nominated in the F.I.R with specific role; 1180 grams of Charas was recovered from the petitioner; the petitioner has failed to point out any malafide on part

of the prosecution; that he is involved in so many other cases of like nature and is also a previous convict, hence he has urged for dismissal of the present bail application.

6. We have heard the learned counsel for the parties and have gone through the available record with their able assistance.

7. Perusal of the record reveals that 'Chars' weighing 1180 grams was recovered from the possession of the petitioner. The petitioner was arrested red handed from the crime scene. Substantial quantity of contraband substance was recovered from the petitioner. Samples of the contraband substance were separated for Chemical Examination and sent for analysis. Report under section 173 of Cr.P.C. has been submitted before the learned trial Court. Charge has been framed and the trial of the case is in progress and will be concluded in near future. Furthermore, there is no denial of previous conviction of the petitioner in similar nature of the case, i.e. in case F.I.R No.23 dated 25.01.2017 under Section 9-B CNSA, registered at Police Station Karachi Company, Islamabad, therefore, he is not entitled for any concession of bail. Reference may be made to the case of "*Tariq Bashir and 5 others v. The State*" (PLD 1995 SC 34) wherein it has been mentioned that "Section 497, Cr.P.C. divided non-bailable offences into two categories i.e. (i) offences punishable with death, imprisonment of life or imprisonment for ten years and (ii) offences punishable

with imprisonment for less than ten years, the principle to be deduced from this provision of law is that in non-bailable offences falling in the second category (punishable with imprisonment for less than ten years) the grant of bail is a rule and refusal an exception. So the bail will be declined only in extraordinary and exceptional cases, for example:

(a) Where there is likelihood of abscondance of the accused;

(b) Where there is apprehension of the accused tampering with the prosecution evidence;

(c) Where there is danger of the offence being repeated if the accused is released on bail; and

(d) Where the accused is a previous convict."

Reliance in this regard is placed upon the case reported as "*Zafar Iqbal vs. Muhammad Anwar and others*" (2009 SCMR 1488), "*Tariq Bashir and five others vs. The State*" (PLD 1995 Supreme Court 34) and "*Subhan Khan v. The State*" (2002 SCMR 1797).

8. So far as the case law relied by the learned counsel for the petitioner is concerned, the same are distinguishable to the facts of the present case. Even otherwise, it is settled principle of law that each and every criminal case is to be decided on its own merits.

9. For what has been discussed above, bail is refused and the instant petition is accordingly **dismissed**.

10. Needless to mention that this is tentative

assessment, which shall not affect trial of this case in any manner,

(MOHSIN AKHTAR KAYANI)
JUDGE

(GHULAM AZAM QAMBRANI)
JUDGE

Rana M.Ift.*