

Form No: HCJD/C-121

ORDER SHEET.

ISLAMABAD HIGH COURT, ISLAMABAD,

JUDICIAL DEPARTMENT.

Criminal Misc. No. 126-B of 2022

Malik Saghir Javed

Versus

The State and another

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
	17.02.2022	Raja Rizwan Abbasi, Advocate for the Petitioner. Makhdoom Syed Fakhar Imam Ali Shah, learned State Counsel. Muhammad Hanif, S.I., P.S Shalimar. Safdar Hussain, ASI., P.S Shalimar.

TARIQ MEHMOOD JAHANGIRI, J.-

Through the instant petition, the petitioner seeks bail after arrest in case F.I.R. No. 25/2022, dated 13.01.2022, offence under section 9-C CNSA, 1997, read with Articles 3 & 4 of the PEHO, 1979 registered at Police Station Shalimar, Islamabad.

02. It is alleged that on spy information, police has recovered 1180 grams of *Charas*, 110 grams of *Ice* and 49 bottles of *liquor* from a vehicle driven by the petitioner, hence the instant FIR.

03. Learned Counsel for the petitioner /

accused contends that petitioner / accused has falsely been implicated in the case by the local police with malafide intentions; there is no apprehension of petitioner's absconding or tampering with the prosecution evidence, if he is enlarged on bail; recovery, if any, effected from the petitioner / accused is planted one; there is no single independent witness of the occurrence available which makes case of the petitioner / accused one of further inquiry; he is previously non-convict and is entitled for grant of bail after arrest.

04. Conversely, learned State Counsel has vehemently opposed the bail petition and stated that huge quantity of contraband was recovered from possession of the petitioner/accused. No enmity of police is on the record, which shows that the petitioner / accused has falsely been involved in this case; he is also involved in other cases of similar nature, hence, he is not entitled to the concession of bail.

05. We have heard the arguments advanced by learned counsel for the petitioner /

accused, learned State Counsel and perused the record with their able assistance.

06. It is an admitted fact that only 1180 grams of charas and 110 grams of Ice was allegedly recovered from the petitioner / accused and alleged recovered substance marginally exceeds 01-kilogram, so he is not likely to be awarded maximum sentence provided by the statutes, he is in jail and his trial is not likely to be concluded in near future. Reliance is placed upon case titled as "***Saeed Ahmed V. State through P.G. Punjab and another***" (**PLJ 2018 SC 812**), wherein bail after arrest of the accused, who was found in possession of 1350 grams of *charas* was allowed by the Hon'ble Supreme Court of Pakistan.

07. In another case titled as "***Abbas Raza V. The State through P.G. Punjab and other***" (**2020 SCMR 1859**), accused found in possession of 1300 grams of contraband, was allowed bail by the Hon'ble Supreme Court of Pakistan. It has been held by the Hon'ble Supreme Court of Pakistan, that:

"the liberty of a person is a precious right which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973. The denial of the same should be such which can establish the guilt of the accused without second thought".


08. It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as **Aya Khan and another V. The State (2020 SCMR 350)**, that:

*"Without discussing the merits of the case lest it prejudice the case of one or the other side, suffice it to say that in the FIR or in the recovery memo, no where it is stated that whether it was net or gross weight of the narcotics and in this eventuality it **becomes a border line case** between subsections (b) and (c) of section 9, C.N.S.A., 1997. Thus the benefit of doubt in this aspect shall go to the accused. In view of the principle of law laid down in the case of Manzoor and 4 others v. The State (PLD 1972 SC 81)." **(Emphasis added).***

Accused carrying possession of 1100 grams of chars was granted bail.

09. It is an admitted position that only 1180 grams of *Charas* and 110 grams of *Ice* was allegedly recovered from the accused. It has been consistent view of the superior Courts as well as of this Court that in cases where recovery of narcotic substance does not exceed the limit between 900 to 1500 grams, the case being of borderline between clauses (b) and (c) of Section 9 of Control of Narcotic Substances Act, 1997, therefore, invariably in all cases applicants have been admitted to bail. In this regard, guidance can be taken from the cases titled as **"Wajid alias Waji v. State" (2016 PCr.LJ 831), "Ali Hassan alias Hasan v. State" (2014 YLR 188), "Asif Ali v. State" (2013 YLR 1241) and "Ayaz v. State" (2011 PCr.LJ 177).**

10. In a case titled as **"Jamal-ud-Din alias Zubair Khan v. The State" (2012 SCMR 573)**, the Hon'ble Supreme Court of Pakistan while granting bail after arrest to accused carrying four (04) kilograms of *Charas* has held that:

"Needless to say that the Court while hearing, a petition for bail is not to 

keep in view the maximum sentence provided by the Statute but the one which is likely to be entailed in the facts and circumstances of the case. The fact that petitioner has been in jail for three months yet commencement of his trial let alone its conclusion is not in sight, would also tilt the scales of justice in favour of bail rather than jail."

11. As far as recovery of 49 bottles of liquor from possession of the petitioner / accused is concerned, there is no evidence on record regarding selling or buying the alleged intoxicants by the petitioner / accused. Police has also committed violation of section 103 Cr.P.C.

12. As far as contention of learned State Counsel, that the petitioner is involved in other criminal cases is concerned, it would suffice that mere involvement in other cases would not disentitle him from the relief of bail if he otherwise succeeds in bringing his case within the meaning of further inquiry. Needful to add that liberty of a person is a precious right that has been guaranteed by the Constitution of Islamic Republic of Pakistan,

1973. Hence in cases, where there is slight tilt towards grant of bail, the same needs to be preferred over letting one to confine in jail for an indefinite period in name of trial when conclusion thereof can competently impose due punishment for such released person. Further, learned State Counsel has not brought on record any material that petitioner / accused has been convicted in any other case, hence, mere involvement in criminal cases cannot be a ground to withhold the concession of bail in given circumstance. Reliance is placed upon the cases titled as **"Moundar and others V. The State" (PLD 1990 SC 934), "Babar Hussain V. State" (2020 SCMR 871), "Muhammad Rafique V. State" (1997 SCMR 412) "Muhammad Abid Farooq V. The State and another" (2015 P Cr. LJ 224) and "Jamal-ud-din alias Zubair Khan V. The State" (2012 SCMR 573).**

13. It is well settled principle of law that while deciding the bail application, before recording of evidence in the trial Court, only

tentative assessment is to be made by the Court and it is not permissible to go into details of evidence in one way or the other that might prejudice the case of either party.

In this regard reliance is placed upon **PLD 1994 Supreme Court 65, PLD 1994 Supreme Court 88, 2021 SCMR 111 and 2020 SCMR 937.**

14. Investigation in the case has been completed; the petitioner / accused is previously non-convict, no more required for further investigation; he is behind the bars without any progress in the trial. Fair and speedy trial is one of the fundamental rights of the petitioner; no moral and legal compulsion exists to keep him behind the bars for an indefinite period which amounts to punishment without trial.

15. We do not find this to be a case where bail should be refused as an exception. Ultimate conviction and incarceration of guilty accused can repair the wrong caused by mistaken relief of bail after arrest but no satisfactory reparation can be offered to the

accused for his unjustified incarceration if he is acquitted ultimately.

16. A tentative assessment of record shows that present petitioner has made out a case of further inquiry as envisaged under Section 497(2) Cr.P.C.

17. In view of above, instant petition is **accepted** and the petitioner is admitted to bail subject to furnishing bail bonds in the sum of **Rs. 1,00,000/- (Rupees one Hundred Thousand only)** with one surety in the like amount to the satisfaction of learned trial Court.

18. Needless to mention that, this is a tentative assessment which shall not affect the trial of case in any manner.

(BĀBAR SATTAR) (TARIQ MEHMOOD JAHANGIRI)
JUDGE JUDGE