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

Criminal Misc. No. 1341-B of 2020

Nadeem Sajid

Versus

The State

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(06)	11.02.2021	Mr. Muhammad Fahad Shabbir, Advocate for the petitioner / accused. Arif Riaz Butt, SPP, ANF. Naseer Ahmed, A.S.I.

TARIQ MEHMOOD JAHANGIRI, J.- Through the instant petition, the petitioner seeks bail after arrest in case F.I.R. No. 195/18, dated 04.12.2018, offences under section 9-C, 15 CNSA, 1997 registered at police station ANF/RD North, Rawalpindi.

02. As per contents of the FIR, 50 kilograms and 400 grams of Opium and 14 kilograms and 400 grams of charas have been recovered from the spare tyre of the vehicle bearing registration No. SGI-8199 while the petitioner was sitting on front seat of the said vehicle, hence the instant FIR.

03. Learned counsel for the petitioner has argued that the petitioner is innocent; he has not committed any offence; no specific role has been attributed to the petitioner which makes his case one of further inquiry. He further states that no recovery has been effected from the personal possession of the petitioner as the petitioner was merely a passenger having no knowledge

regarding the presence of narcotics in the vehicle, hence he is entitled for the grant of bail after arrest. Learned counsel for the petitioner has relied upon cases titled as "***Abdul Ghafoor and another V. The State (2020 P Cr.LJ 1512)", "Hussain Ullah V. The State and another (2019 SCMR 1651)" & "Muhammad Ullah V. The State (2009 SCMR 954)".***

04. Conversely, the Special Public Prosecutor (SPP), ANF, repelled the bail petition on the ground that the petitioner / accused was caught red handed with huge quantity contraband items and that the offence is against the public at large, hence the petitioner / accused is not entitled to the concession of bail. He further states that the ANF officials have no previous enmity with the petitioner; the offence falls under prohibitory clause of section 497 Cr.P.C; the occurrence prima facie portrayed the nexus of petitioner with the commission of the alleged offence.

05. We have heard the arguments of learned counsel for the contesting parties and perused the record with their able assistance.

06. Allegedly a huge quantity of narcotics weighing 50 kilograms and 400 grams of Opium and 14 kilograms and 400 grams of charas has been recovered from spare tyre of the vehicle. The petitioner was sitting on front seat of the said vehicle, the quantity of recovered narcotics falls within the parameter of section 9-C of CNSA 1997,

which provides capital punishment i.e. death sentence, and not less than imprisonment for life, this aspect confirms the heinousness of the offence. The samples were sent to NIH laboratory, the report whereof is positive, which confirms the status of the narcotics. The petitioner has not been able to show any malafide / enmity on the part of prosecution for false implication. Recovery has been effected on the pointation of the petitioner and his co-accused. Petitioner was present on the front seat of the vehicle, the question of having conscious knowledge cannot be ruled out at this stage, investigation in the case has been completed, challan has been submitted before the court, trial has almost been completed, statements of only two witnesses are required to be recorded. It has been laid down by the Hon'ble Supreme Court in cases reported as "*2020 SCMR 937, 2020 SCMR 594, 2020 SCMR 1182, 2017 SCMR 325 and 2016 SCMR 1447*", that *the accused are not entitled for the grant of bail after arrest in the offences falling under the prohibitory clause of section 497 Cr.P.C*. It has also been laid down by the Hon'ble Supreme Court in case titled as "Rehmat Ullah V. State *(2011 SCMR 1332)*", that *the courts should not grant or cancel bail when the trial is in progress*.

07. At present, the material available on file, prima facie, connects the petitioner with the commission of alleged offence. The case law relied

upon by the learned counsel for the petitioner is not relevant as every case is to be seen in its own perspective.

08. In view of above, we see no reason to exercise discretion in favour of the petitioner, the petition thus stands ***dismissed.***

09. The observations made hereinabove are tentative in nature and will, of course, have no impact upon the merits of the case.

(AAMER FAROOQ)
JUDGE

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal