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

Criminal Misc. No. 1225-B of 2023
Muhammad Naseer
Versus
The State.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.

28.08.2023 Raja Zafarullah Dhanial, Advocate for the petitioner.
Malik Anique Ali Khitana, State Counsel with Tanvir Hussain Kayani, S.I..

ARBAB MUHAMMAD TAHIR, J.-The instant petition in terms of section 497 Cr.P.C. is preferred by *Muhammad Naseer*, accused/petitioner, praying for post-arrest bail in F.I.R. No. 481,dated 11.06.2023, registered under Section 9(1)6-C of the Control of Narcotics Substances Act, 1997, (**'Act of 1997'**), at Police Station Khana, Islamabad.

2. As per the contents of FIR, the petitioner was apprehended by a police contingent on 11.06.2023, at about 05:30 p.m., headed by Tanveer Hussain Kayani SI, P.S. Khanna, Islamabad, pursuant to spy information from the area of Service Road Abu Bakkar Masjid Gangal, Islamabad with a white colour shopping bag, where-from, heroin weighing 1080 grams, wrapped in another blue colour shopper was recovered.

3. Learned counsel argued that the petitioner has falsely been implicated in this case;that the alleged recovery of contraband is planted; that no private witness from the locality was associated with the recovery proceedings; that the alleged recovery falls within the ambit of "borderline"; that there is no independent witness; that the petitioner is previous non-convict and non-record holder; that the alleged offence does not fall within the prohibitory clause of section 497 Cr.P.C; that

investigation has since been completed and the petitioner is no more required for further investigation; that the report of Chemical Examiner has not yet been received and that further incarceration of the petitioner would serve no useful purpose, therefore, petitioner is entitled to the concession of post arrest bail at this stage.

4. Conversely, learned State Counsel contends that petitioner was arrested at the spot with huge quantity of narcotics substance; that sufficient incriminating material is available on record which,*prima facie*, connects the petitioner with the commission of alleged offence, therefore, not entitled to the concession of bail.

5. Heard, record perused.

6. The Act of 1997 has been amended through the Control of Narcotic Substances (Amendment) Act, 2022 (**"Amendment Act"**) whereby section 9 has been substituted. The amendment laid down separate sentences for the recovery of each kind of narcotic substance. The sentence provided for the recovery of charas weighing 500 grams to 999 grams in section 9(1)-3(b) is up to 09 yearsand not less than five years, while for the recovery of charas weighing 1000 grams to 4999 grams in section 9(1)-3(c) is up to 14 years but shall not be less than 09 years.

7. It is well settled principle that while deciding a bail application, the lesser quantum of sentence is to be taken into consideration. In the present case, as per the recovery memo, the heroin wrapped in blue colour shopping bag was recovered and on weighing it was found 1080 grams. According to prosecution's own version, the contraband was wrapped in blue colour shopping bag but it is nowhere mentioned, either in the recovery memo or in the complaint that the contraband was

weighed without wrapping material. This aspect warrants further probe as to whether the quantity allegedly recovered from the possession of the petitioner attracts section 9(1)6-C of the Act of 1997.

8. It is also matter of record that the contraband was allegedly recovered from the possession of the petitioner on 11.06.2023 and as per the docket available on the record, the sample parcel was sent to the office of NFSA Islamabad after about 05 days on 16.06.2023 but the report of the Chemical Examiner is still awaited.

9. The Hon'ble Supreme Court of Pakistan in the case of ***Aya Khan and another v. The State***(2020 S.C.M.R. 350) allowed bail to an accused on the basis of case being one of borderline. Reliance is also placed upon case of ***Saeed Ahmed v. The state etc***, (***PLJ*** 2018 SC 812***)*** wherein bail was allowed to an accused from whose possession 1350 grams substance recovered that marginally exceeds 1 K.G. In the case of ***Naimatullah and another v. The State*** (2017 MLD 1097) it was held that in cases where recovery of narcotic substance does not exceed the limit between 900 to 1500 grams the case is of borderline between clauses (b) and (c) of the Act of 1997.

10. Furthermore, the petitioner is neither a previous convict nor retains any criminal record and is a first offender; investigation has already been completed and his further incarceration would serve no useful purpose.

11. In view of above tentative assessment, the petitioner has succeeded to make out a case for the grant of post arrest bail at this stage. Consequently, the instant bail petition is **allowed**, petitioner(*Muhammad Naseer*) isadmitted to post-arrest bail subject to furnishing bail bonds in the sum of Rs.200,000/- (Rupees two hundred thousand), with two sureties, in the like amount to the satisfaction of the learned Trial Court.

12. The observations made herein above are tentative in nature and shall have no impact upon the trial of the case in any manner.

13. Before parting with the order, it is necessary to mention that the menace of drugs is increasing day by day. It is disheartening to observe that every day criminal cases for contravention of the Act of 1997 are being registered. In almost all the cases the persons apprehended are drug peddlers. The police officials arrest the person alongwith the narcotic substance and the next day he is sent to judicial lockup without any interrogation as to the persons from whom the recovered narcotic substance was received/purchased; to whom it will be delivered/sold; for which purpose the said narcotic substance will ultimately be utilized; who are deriving financial benefits and for which purpose the said derived finance will be utilized; who are the persons engaged in the business in contravention of the Act of 1997; and which are the assets derived by persons engaged in dealing with narcotics. The Act of 1997 provides for a comprehensive mechanism to deal with all matters so as to curb this menace, which in fact is a great threat to the society and is affecting lives especially the youngsters.

14. It is mandatory for the Investigating Agencies to conduct investigations on true lines in accordance with the spirit of the Act of 1997. Sections 6, 7 and 8 of the Act of 1997 prohibit possession of narcotic drugs, import or export and trafficking or financing the trafficking of narcotic drugs. Section 8(a) provides that no one shall organize, manage, traffic in or finance the import, transport, manufacturing or trafficking of narcotic drugs, psychotropic substances or controlled substances. In-addition section 14 of the Act provides that no one shall, within or outside Pakistan, participate in, associate or conspire to an offence punishable under the Act of 1997. It is duty of the investigating agencies to collect information as to the

assets derivable from trafficking of narcotic substances or otherwise acquired by the accused persons from dealing with or engaging in any manner in any business in contravention of the Act of 1997, so as to be presented before the trial court, as the same are liable to confiscation, if proved before the learned trial court.

15. It is, therefore, mandatory for the investigating agencies to conduct investigations in narcotics cases on true lines instead of acting in mechanical manner and putting the entire burden on the person arrested at the spot. It has been observed that almost in every case, efforts are not being made by the investigating agency to trace the complete chain involved in the transaction. Financing the trafficking of narcotic drugs, its aiding, abetment or association are also offences stipulated in section 8 and 14 of the Act of 1997. It is noticed that in some cases the accused persons disclose the names of persons who finance the whole transaction and associated with the recovered narcotic substance, but due to incapacity and incompetence of the investigating officers, only the person apprehended at the spot is arrested and the complete chain connected with the commission of crime is not investigated.

16. Lack of specialized training and capacity of police officials to deal with narcotics cases in accordance with the spirit of the Act of 1997 is not only contributing towards degeneration of the society but simultaneously provide safe environment to the negative forces in the society to destroy the lives of citizens. Therefore, in order to achieve the purpose of the Act of 1997, the Inspector General of Police, Islamabad Capital Territory may consider offering specialized training to the officers connected with investigations of narcotics cases and establish a centralized system within the department to monitor investigations in narcotics cases.

17. The office is directed to serve a copy of this order on the Inspector General of Police, ICT.

(MIANGUL HASSAN AURANGZEB)
JUDGE

(ARBAB MUHAMMAD TAHIR)
JUDGE

Approved for reporting.

A.R.Ansari