ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No. 1929-B of 2023

Naseeb Rawan
Vs.
The State

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	29.01.2024	Mr. Musadiq Aziz, Advocate for the petitioner. Rana Zulfiqar Ali SPP ANF with Mashooq ali DD and Fawad, SI.

Arbab Muhammad Tahir, J.- The petitioner is seeking post arrest bail in F.I.R. No. 198, dated 12.11.2023, under Section 9(2) 5, 9 (1) 6(b) of the Control of Narcotics Substances Act, 1997 ("**Act of 1997**"), registered at Police Station ANF RD/North, Rawalpindi.

2. The facts, relevant for adjudication of the petition in hand are that on 12.11.2023, at about 11:00 a.m., the police intercepted a passenger van near M-1 Motorway Exit Islamabad. The personal search of petitioner lead to the recovery of Ice weighing 800 grams and heroin weighing 250 grams, hence the FIR was registered. During investigations, the petitioner had disclosed the source from the narcotic substances were received for onward delivery.

3. Learned counsel contends that the petitioner is innocent and has falsely been involved in the instant case; that the story narrated in the FIR is concocted; that the alleged place of recovery is populated area and no person from the locality has been associated; that case of the petitioner calls for further inquiry; that

investigation has since been completed and the petitioner is no more required for further probe and that petitioner does not retain any criminal record, therefore, entitled to the concession of post-arrest bail. Learned counsel has placed reliance on the cases reported as *"Ateeb ur Rehman @ Atti Mochi v. The State and others"* [2016 SCMR 1424], *"Gull Muhammad v. the State"* [2022 MLD 2071 Islamabad], *"Rehmat Gul v. The State"* [2022 PCrLJ Note 48 Islamabad], *"Ghulam Murtaza and another v. The State"* [PLD 2009 Lahore 362].

4. Conversely, learned Special Prosecutor, ANF vehemently opposed the bail application of the petitioner and argued that huge quantity of narcotics was recovered from the possession of the petitioner; the petitioner is connected with the commission of offence; sufficient incriminating material is available on record; that the offence alleged in the FIR is not bailable, therefore, not entitled to the concession of bail.

5. Heard. Record perused.

6. Before adverting to the grounds raised in support of the bail, I shall summarily highlight the main functions of the investigating agencies under the Act of 1997 to curb the menace of drug abuse. The Act of 1997 has been enacted to prohibit possession of narcotic substances and rehabilitate victims of drug abuse. To ensure strict adherence to the provisions of the Act of 1997, penalties have been provided under section 9 thereof. In order to ensure that no one indulges in the dealing and trafficking of narcotic substances in violation of the Act of 1997, the profit derived and properties acquired out of such profit have

been declared as liable to confiscation. How can this goal be achieved? Will the State establish separate entities to enforce each provision of the Act of 1997 and let the police/ANF proceed with investigations of narcotics cases without due adherence to provisions of the Act of 1997?

7. When a criminal case is registered on the allegation of possession of narcotic substance, the accused is arrested at the spot. Then the line of investigation (*without prejudice to the Act of 1997 and the rules made thereunder*) should be.-

(i). to investigate from whom the recovered narcotic substance was received/purchased by accused;

(ii). to whom the delivery of narcotic substance was intended;

(iii). to investigate the purpose/ultimate utilization for the recovered narcotic substance;

(iv). to trace the drug abusers (for their rehabilitation);

(v). who are deriving financial benefits and the use/purpose of the derived finance/ assets;

(vi). who are the persons engaged in the business in contravention of the Act of 1997 (starting from cultivator/ manufacturing to the end abuser);

(vii). and which are the assets derived by persons engaged in dealing with narcotics.

8. The Act of 1997 provides for a comprehensive mechanism to deal with all matters so as to curb the menace of drug abuse, which in fact is a great threat to the society and adversely affecting citizens. 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. 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.

9. Chapter IV of the Act of 1997 deals with freezing and forfeiture of assets. Section 37 empowers the Court and appropriate officers to order freezing of assets. Section 38 empowers the investigating agency to trace and identify assets acquired through illicit involvement in narcotics. Section 39 provides that after the accused is convicted of an offence under the Act of 1997, on request of the investigating agency, the Court is empowered to order forfeiture of assets of the convict, or as the case may be, his associates, relatives or any other person holding or possessing assets on behalf of the convict. It is also pertinent to refer to section 42 of the Act of 1997, which makes the acquisition of assets, frozen under the provisions ibid, punishable with imprisonment for a term which may extend to three years and with fine.

10. Section 49A (Remand) has been inserted by section 19 of Control of Narcotic Substances (Amendment) Act, 2022 in the Act of 1997, which provides that a person arrested for breach of the provisions thereof shall, having regard to the facts and circumstances of the case, be liable to be detained in

custody for the purpose of inquiry and investigation not exceeding *"ninety days"*. The Magistrate while dealing with the request for remand of the accused submitted by the investigating officer is, therefore, bound to consider such request keeping in view the scope of investigations provided under the Act of 1997. On query raised by this Court, the investigating officer has stated that normally when the accused is arrested, narcotic substances is recovered at the spot, therefore, it is general understanding of the Magistrates that after recovery further physical remand would be futile. Such statement, however, is subject to confirmation; nonetheless such concept is violative of the basic spirit of the Act of 1997. Curbing the menace of drug/narcotic abuse is not an easy task; rather the same would require restless efforts of every stakeholder in the criminal justice system. One case of narcotic substance, if investigated in the manner in which the Act of 1997 is structured, would bring to justice the whole chain i.e. cultivator/manufacturer, peddler, seller and drug abuser and would serve as deterrent factor in the society. The manner in which narcotics cases are being investigated favours the real culprits. The drug peddlers are caught and sent to jail. Nobody dares to investigate the giants who derive profits out of such illicit drug/narcotic deals. Their assets are never investigated. The two ends i.e. drug dealer, cultivator, manufacturer and the drug/narcotic abusers are never held accountable. This would never have been intention of the legislature while enacting the Act of 1997. Investigating the assets (*derived from the proceeds of illicit drug dealing*) of persons involved in narcotics cases is mandatory for making a request to the Court by the investigating agency for confiscation/forfeiture of the same. It is, therefore, not the discretion of the investigating agency, but a

bounden duty of the investigating agency to investigate complete chain in the commission of offence and trace the assets derived out of such illicit trade.

11. In compliance with the order of this Court, the learned Special Prosecutor, ANF has placed on record copy of SOPs adopted by the Anti-Narcotics Force for investigation of criminal cases. Perusal of the SOPs shows that they are comprehensive and covers every aspect of a criminal case registered under the Act of 1997. However, in the investigations of the instant case, provisions of the Act of 1997, the rules made thereunder and the SOPs adopted by ANF, to the extent of tracing assets and discovering the complete chain of culprits, have not been complied with. As a result of such incomplete investigations, the society would face the menace of narcotics/drugs abuse forever. If the State prefers to penalize citizens for possessing fruit of a forbidden tree and opts not to cut that forbidden tree and holding its beneficiaries accountable, the outcome would be absurd. Similarly, not investigating the main culprits/sources of narcotic substance in a criminal case would grant them a licence to violate the Act of 1997 and cause irreparable damage to the society.

12. The Federal Prosecution Service Act, 2023 (hereinafter the *"Act of 2023"),* has been enacted by the Parliament and duly notified in the official gazette on 31.10.2023 and by virtue of sub-section (2) of section 1, its application is extend to the whole of Islamabad Capital Territory. Section 20 of the Act of 2023 provides that its provisions shall have overriding effect on all other laws including the Code of Criminal Procedure, 1898. Under the Act of 2023, the Prosecutor General and other prosecutors are, inter alia,

empowered to examine reports under section 173 Cr.P.C., call for report from the law enforcement agencies in relation to investigation, refer to the authority competent to initiate disciplinary proceedings under any law, to take disciplinary action against any public servant working in connection with investigation or prosecution. Section 9(2) provides that the report under section 173 Cr.P.C., including a report of cancellation of FIR or a request for discharge of a suspect or an accused or a complaint by a public servant authorized to file a complaint shall be submitted to the court through the prosecutor (appointed under the Act of 2023). Sub section (3) of section 9 empowers the prosecutor to review the police report or the complaint, as the case may be, in accordance with the provisions of Cr.P.C or the Act of 2023. Sub section (4) of section 9 of the Act of 2023 provides that where a prosecutor requires clarifications, or is of the view that additional evidence needs to be collected, he may return the police report or complaint with observations that (i) to clarify the method of collection of evidence, (ii) to explain why a particular line of inquiry was not followed (iii) to explain why a defence was not considered, (iv) to collect additional evidence. Non-compliance with the provisions of the Act of 1997 is squarely hit sub-section (4) of section 9 of the Act of 2023. The Prosecutor General or any other prosecutor is, therefore, empowered to return the report under section 173 Cr.P.C. submitted by the investigating agency if the investigations in narcotics cases have not been conducted according to the spirit of the Act of 1997.

13. Reverting back to the merits of the case, the available record has been tentatively assessed. The petitioner had been apprehended while in possession of

800 grams methamphetamine (ice) and 250 grams heroin. The report of the Punjab Forensic Science Agency confirms the contraband to be as such. The petitioner was arrested at the spot; hence there is no probability of mistaken identity. The punishment for contravention of the provisions sections 6, 7 and 8 of the Act of 1997 regarding narcotic drugs i.e. possessing 250 grams heroin 9(1)6(b) is imprisonment which may extend to ten years but shall not be less than seven years with fine upto one hundred and twenty five thousand rupees, whereas, in case of possessing 800 grams psychotropic substance i.e. methamphetamine (ice) has been provided in section 9(2)-Sr. No.5 of the Table as imprisonment which may extend to seven years but shall not be less than five years with fine upto eight hundred thousand rupees. The offence under section 9(1)6(b) falls within the prohibitory clause of section 497 Cr.P.C. Furthermore, the nature of offence (*i.e. offence against society*), the likelihood of repetition of offence, existence of, *prima facie*, sufficient incriminating material connecting the petitioner with the commission of offence in the shape of positive report of the Chemical Examiner, recovered narcotic substance and statements of witnesses under section 161 Cr.P.C., are sufficient grounds/reasons to decline the relief of post arrest bail to the petitioner.

14. For what has been discussed above, the instant petition is dismissed with following directions.-

(a) After insertion of section 49A in the Act of 1997, the maximum period of remand is ninety days. As highlighted above, the investigation in narcotics cases is not limited to mere recovery of narcotic substance from the peddler but

extends to the source, manufacturer, cultivator, seller, dealer, etc. The Magistrate while dealing with the request of remand shall give due consideration to facts and circumstances of the case and the scheme of the Act of 1997 and grant physical remand of the accused for a reasonable period.

(b) Investigating the complete chain in commission of offence under the Act of 1997 and trace the assets derived out of such illicit trade/dealing is the bounden duty of the investigating agency and not discretion. The investigating officer shall, therefore, investigate all persons and trace their assets involved in the commission of offence under Act of 1997.

(c) The Act of 2023 is applicable in the whole of Islamabad Capital Territory and its provisions have overriding effect over all other laws by virtue of section 20 thereof. Therefore, the final reports prepared under section 173 Cr.P.C. by the investigating agencies in criminal cases registered under the Act of 1997 shall be submitted to the office of Prosecutor General/District Public Prosecutor, ICT for onward transmission to the Court. The Prosecutor General/District Public Prosecutor shall examine the said report and satisfy himself as to whether every aspect of

the criminal case highlighted in paragraph 6 above, has been investigated. In case of deficiency, the challan shall be returned under section 9 of the Act of 2023 with clear directions/guidelines.

(d) The Director General, ANF, shall depute monitoring unit or assign responsibility to a team of officers, who shall supervise and recommend disciplinary proceedings against the investigating officers for conducting investigations against the spirit of the Act of 1997.

15. Office is directed to transmit copy of this order to the Director General, Anti-Narcotics Force, Inspector General of Police, ICT, Advocate General, ICT, the Prosecutor General/District Public Prosecutor, ICT and the Sessions Judges (East and West Divisions), Islamabad for information, compliance and circulation amongst the relevant quarters.

Needless to mention that the above observations, in so far as, they are relevant to the merits of the instant case, are tentative which shall not affect rights of the parties during trial.

(ARBAB MUHAMMAD TAHIR)
JUDGE

A.R.Ansari