ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl.Misc.No.371-B of 2024
Hassan Ali
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.
	18.03.2024	**Ms. Abida Farooq, Advocate for the petitioner** **Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General** **Malik Abdul Rehman, learned State Counsel with Ijaz Ahmad Gondal, S.I. and Zafar Iqbal Gondal, S.I.**

Through the instant criminal miscellaneous petition the petitioner, Hassan Ali son of Shafqat, seeks bail after arrest in case F.I.R. No.1870, dated 12.12.2023 for offence under Section 9(1)(6)(c) of the Control of the Narcotic Substances Act, 1997 (**"C.N.S.A."**) registered at Police Station *Khana* Islamabad.

2. Vide order dated 17.02.2024, the petitioner's petition for bail after-arrest was dismissed by the Court of learned Additional Sessions Judge, Islamabad.

3. It is *inter alia* contended by the learned counsel for the petitioner that the petitioner has falsely been booked in this case with *mala fide* intention and ulterior motives; that no offence as alleged in the F.I.R. is made out against the petitioner; that no contraband substance whatsoever was recovered from the petitioner; that the recovery, if any, allegedly effected from the petitioner is planted; that the case against the petitioner is one of further inquiry; that the report of the chemical examination of the narcotic substance allegedly effected from the petitioner is still awaited;

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and that the petitioner has been incarcerated since the date of his arrest i.e. 12.12.2023. Learned counsel for the petitioner prayed for the bail petition to be allowed and for the petitioner to be released on bail.

4. On the other hand, learned Deputy Attorney-General, assisted by learned State Counsel, opposed the bail petition by contending that the petitioner was caught red handed in possession of 1310 grams of *heroin;* that the petitioner is nominated in the F.I.R. and was arrested from the crime scene; and that the quantity of recovered contraband substance falls within the parameters of Section 9(1)(6)(c) of C.N.S.A, which provides maximum imprisonment of fourteen years along with fine; and that in view of the recovery of substantial amount of narcotics, the petitioner is not entitled to the concession of bail. Learned Deputy Attorney-General prayed for the bail petition to be dismissed.

5. I have heard the contentions of the learned counsel for the petitioner as well as the learned Deputy Attorney-General and the State Counsel and have perused the record with their able assistance.

6. The prosecution story as narrated in the F.I.R. is that on 12.12.2023 at about 01:50 p.m., the complainant, Zafar Iqbal S.I. was on patrol duty along with other police officials in the area of police station *Khanna* when they received spy information about the presence of a boy selling drugs near CNG/TM Service Road towards Islamabad. Pursuant to such information, the police party reached the spot and the accused was apprehended. On personal search, *heroin* weighing 1310 grams was recovered from a blue coloured shopping bag which he was holding in

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his right hand at the time of his arrest. The investigating officer, after securing the *heroin,* asked the accused about his name. He stated that his name was Hassan Ali son of Shafqat. Consequently, the F.I.R. in question was registered against him.

7. The petitioner was alleged to have been in possession of 1310 grams of *heroin* at the time of his arrest from the crime scene. The learned trial Court, while declining bail to the petitioner, *inter alia* held that the offence punishable under Section 9(1)(6)(c) of C.N.S.A. has been made out from the alleged quantity of recovered substance which is punishable with imprisonment which may extend to fourteen years and thus the offence falls within the prohibitory clause of Section 497 Cr.P.C. Indeed the offence alleged to have been committed by the petitioner falls within the prohibitory clause of Section 497 Cr.P.C., however, it is trite law that bail applications are to be decided on the basis of peculiar facts and circumstances of each case.

8. It has been noticed that the report of chemical examiner is still awaited. Recently, this Court vide order dated 13.02.2024 passed in Crl.Misc.Nos.113, 168, 180, 184 and 192-B/2024 granted bail to number of accused and held inter alia as follows:-

> ***"14. All the petitioners have spent considerable time behind the bars and there is no chemical report to verify that recovered material is heroin, charas or any other psychotropic drug. In absence of such reports, this court is left with no other option but to consider that there is apparently no charge against the petitioners in terms of allegations referred in the F.I.R.s. Hence, cases of petitioners fall within the purview of Section 497(2) Cr.P.C. and benefit should have been extended to the petitioners in the light of judgment reported as 2021 MLD 1129 (Nadir Hussain Vs. The State). Petitioners are behind the bars without any progress in trial, since their arrest....."***

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9. Furthermore, the Hon'ble Apex Court, while extending bail to accused in absence of F.S.L. report, made his case as one of further inquiry. Reliance in this regard may be placed on the following case law:-

i) In the case of Shahzad Khizar Hayat Vs. The State (2014 YLR 849), it was held *inter alia* that non-availability of F.S.L. report with regard to narcotic substance allegedly recovered makes the case of accused as one of further inquiry.

ii) In the case of Mst. Husna Bibi Vs. The State (2022 PCr.L.J. 707), bail was granted to an accused from whom 3280 grams of *heroin* was recovered. It was held *inter alia* by the Hon'ble Peshawar High Court that the prosecution had failed to produce the Forensic Laboratory's report of contraband allegedly recovered from accused.

iii) In the case of Murad Khan Vs. The State (2020 SCMR 431), bail was granted to an accused who was driving a motorcar and from its secret cavity 600 grams of *heroin* were recovered. While extending the benefit of bail to accused, the Hon'ble Supreme Court held *inter alia* that the report of FSL was still awaited.

10. There is nothing on record to show that the petitioner has any criminal previous record especially with regard to drugs crime. Even otherwise it is well settled that an accused person cannot be left at the mercy of the prosecution to remain in jail for an indefinite period. It is an inalienable right of every accused to have a speedy trial. In the case of Imtiaz Ahmed Vs. The State through Special Prosecutor, A.N.F. (2017 SCMR 1194), the Hon'ble Supreme

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Court, while granting bail to accused, held *inter alia* as follows:-

> ***"17. To have a speedy trial, is the fundamental right of accused being universally acknowledged. Under the Criminal Procedure Code, smooth methodology and scheme for speedy trial, is provided whether it is held by the Sessions Court or Magistrate, in recognition of the said right of an accused person. This principle shall apply more vigorously to the trials before Special Courts, constituted under the CNS Act, or any other special law so that unnecessary delay, much less shocking one in its conclusion is avoided in all circumstances. Any unreasonable or shocking delay in the conclusion of the trial, before Special Court, like we are confronted with in the present case, would amount to denial of justice, or to say, denial of fundamental rights, to the accused, of speedy trial."***

11. The petitioner is behind bars since the date of his arrest i.e. 12.12.2023. The investigation is said to have been completed. In this scenario, I do not find any ground for refusal of bail to the petitioner while relying upon PLD 1972 SC 81 (Manzoor Vs. The State) whereby it was held that the ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run.

12. As all the prosecution witnesses are stated to be police officials, there is no chance of the accused tampering with the evidence. The petitioner has already spent more than three months behind bars and the *challan* has not been submitted as yet and the conclusion of the trial is not in sight in near future. As the investigation stands completed and the petitioner is in judicial custody, keeping him incarcerated would not serve the ends of justice.

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13. In view of the aforementioned, I am inclined to admit the petitioner on bail subject to his furnishing bail bonds in the sum of Rs.5,00,000/- with two sureties in the like amount to the satisfaction of the learned Trial Court. Before parting with this Order, I would like to add that the observations made herein above are tentative in nature and shall not influence the course of the trial in any manner.

14. Given the quantity of narcotic substance that has been recovered from the petitioner, I would not have ordinarily allowed/granted bail to accused but since it has been more than three months since the petitioner's arrest and there is no report of FSL in order to confirm whether or not the substance allegedly recovered from him was a narcotic substance, I have granted bail.

15. It is noted with dismay that in a number of other cases, bail has been granted to accused persons only on the ground that the reports of the chemical examiner regarding the form of the narcotic substance recovered from accused were still awaited. Both the learned Deputy Attorney-General as well as the State Counsel submitted that the reason for the non-issuance of the chemical examiner's report in time is that there are no funds available for the payment of fees for chemical examination of narcotic substance, and that the matter has been sent to the Cabinet for approval / sanction of funds. They also submitted that if the Cabinet accepts and releases the funds at once, the reports which are pending for a long time due to non-availability of funds will be released at the earliest.

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16. It is expected that a summary in this regard shall be placed before the Cabinet at the earliest so that the requisite funds are released which would result in the payment of fees for chemical examination of the recovered narcotic substance. It is matter of grave concern that the issue regarding non-issuance of funds for the chemical examination of drugs/narcotic substances has not been addressed due to lack of approval of the Cabinet. Office is directed to transmit a copy of this Order to the worthy Secretary, Ministry of Interior, for further necessary action.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan

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