ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Miscellaneous No. 273 of 2025

SIKANDAR HUSSAIN

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.
	17.2.2025	**Mr. Shafaqat Razzaq, Advocate for the Petitioner.** **Rana Hassan Abbas, ADPP.** **Mr. Sajjad Ahmed, SI/P.S. Koral.**

Through the instant Petition, the Petitioner seeks post-arrest bail in FIR No. 5/25 dated 6.1.2025 for the offences under Sections 9(1) 6(c) and 15 of the Control of Narcotic Substances Act, 1997 **("CNSA, 1997")** registered with Police Station Koral, Islamabad.

2. The case of the prosecution, as per the FIR, is that the Petitioner was apprehended on 6.1.2025, from *Purani Abadi, Koral* and 1247 grams Heroin was recovered from his possession.

3. The learned counsel for the Petitioner submitted that the Petitioner is innocent and has been falsely involved in the instant case; that investigation of the case has been completed and the Petitioner is no more required for further investigation; that case against the Petitioner is that of borderline; that the recovery is planted one; that no independent witness has been associated with the recovery proceedings; that the Petitioner is previously non-convict; that no forensic report is available on the record to

substantiate that the allegedly recovered material was Heroin; that the case falls within the ambit of further inquiry; and that the Petitioner is ready to furnish adequate surety bond to the satisfaction of the Court.

4. On the other hand, the learned Assistant District Public Prosecutor **(ADPP)** opposed the Bail Application on the ground that the Petitioner has committed heinous offence; and that there is sufficient evidence available on record to connect the Petitioner with the commission of this heinous offence. However, he conceded that the forensic report is still awaited.

5. I have heard the learned counsel for the Petitioner as well as the leaned ADPP and gone through the record.

6. It is alleged that 1247 grams of Heroin has been recovered from the Petitioner. As per the amendments in the CNSA, 1997 introduced vide Control of Narcotic Substances (Amendment) Act, 2022, the punishment prescribed for 500 grams to 1999 grams of Heroin is up to fourteen years and not less than ten years along with fine up to five hundred thousand rupees but not less than one hundred and twenty five thousand rupees. According to the recent judgment in *Barkat Ullah versus The State and another,* Crl. Misc. No. 431-B/2024 it is held by Larger Bench of this Court that:-

> *"(a) The expression "punishable" used in section 497(1) Cr.P.C. refers to the maximum punishment provided for an offence. Thus if an offence is punishable by ten years or more, then subject to other legal grounds, the same would*

attract statutory prohibition contained in section 497(1) Cr.P.C. and

(b) It is held that if provision of the Act of 1997 provides for maximum punishment of ten years and more, it shall attract the prohibitory clause of section 497(1), Cr.P.C. The applicability of the term "borderline case" developed in the context of erstwhile provisions of the Act of 1997 i.e. section 9(c), would amount to anticipating possible period of conviction at bail stage, which exercise is not permissible while making tentative assessment of a criminal case."

The said offence, therefore, falls within ambit of prohibitory clause of Section 497 of Cr.P.C read with bar contained in Section 51 of CNSA, 1997. Therefore, there is sufficient material on the record to believe involvement of the Petitioner in the alleged offence which falls within the prohibitory clause.

7. The absence of forensic report in a narcotic case, where a substantial quantity of narcotics has been recovered, cannot be held solely a sufficient or valid ground for granting bail to the accused as the mere fact that forensic analysis is pending does not diminish the seriousness of the offense or the evidence already available on record. In such cases, the recovery of a large quantity of narcotic substances from the possession of the accused serves as *prima facie* evidence of the Petitioner's involvement in the alleged offence. Moreover, the volume of the contraband itself raises significant concerns about the accused's potential role in its trafficking or distribution.

8. It is also worth mentioning that if the absence of the forensic report does not conclusively

establishes that the recovered substance was Heroin, it equally does not establish that it was not Heroin. As such the lack of forensic report merely delays confirmation, but it does not negate the likelihood that the substance is indeed a narcotic. Furthermore, granting bail in such circumstances would not only undermine the seriousness of narcotic crimes but also present a risk of the accused interfering with the ongoing investigation, influencing witnesses, or potentially committing further offences of similar nature.

9. In view of the foregoing, I am not inclined to grant bail to the Petitioner. As such the instant Bail Petition is **dismissed**.

10. All the observations made hereinabove are tentative in nature and shall have no bearing on the final determination of guilt or innocence by the learned trial Court.

(MUHAMMAD AZAM KHAN)
JUDGE

ADNAN