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

Criminal Miscellaneous No.265 of 2025

Ndukwe Udoka Peter
Versus
THE STATE AND ANOTHER

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	17.02.2025.	**Raja Rizwan Abbasi, Advocate for the petitioner.** **Rana Ali Raza, State Counsel.** **Imran Haider, S.I, P.S Ramna, Islamabad/complainant with record.**

Through the instant petition, the petitioner seeks post arrest bail in case FIR No.30, dated 08.01.2025 under sections 9(1)6(c), Control of Narcotic Substances Act, 1997 **("CNSA, 1997")** registered with Police Station Ramna, Islamabad.

2. Brief facts as per the FIR are that on 08.01.2025, at about 08:10 p.m, police party was present at G-10 Markaz near Shell Pump when they received spy information that one Nigerian citizen namely Peter (present petitioner), who sells narcotics is present at 3rd Road, Sector G-10, Markaz near Post Office Main Road while having sufficient quantity of Heroin powder in his possession. On such information the police party reached the said place at about 08:20 p.m, the petitioner was present in the nearby parking area.

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He was arrested by the police on the spot and on his personal search Heroin weighing 680 grams was recovered from a white colour shopping bag carried by him in his right hand.

3. The learned counsel for the petitioner contended that the petitioner is innocent and has been falsely implicated in this case; that nothing was recovered from the possession of the petitioner and the alleged recovery is planted; that no independent witness has been associated by the local police while making the recovery; that a raid was conducted by the local police at the petitioner's restaurant and on refusal to give the bribe, the petitioner has been involved in this case; that this is a borderline case in the light of judgment of this Court reported as *2024 P Cr. L J 868 [Islamabad]*; that no video of the occurrence was made; that the petitioner moved applications to IG and SSP, Islamabad Police to inquire the illegal harassment and registration of this fake FIR stating therein that the police raided on his restaurant and arrested him from there and they also took with them the CCTV footages of the restaurant in order to vanish the proof of their illegal act; that investigation of the

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case has been completed and the petitioner is no more required for the purpose of further investigation.

4. Conversely, learned State Counsel has vehemently opposed the instant bail petition and contended that huge quantity of Heroin has been recovered from the petitioner; that there is no *malafide* or ill-will on the part of the police officials to falsely implicate the petitioner in the instant case.

5. I have heard the arguments and perused the record.

6. Perusal of the record reveals that the petitioner was caught red handed and a direct recovery of 680 grams Heroin was made from white colour shopping bag carried by him in his right hand.

7. The offence in question carries a maximum punishment of 14 years, thereby placing it within the prohibitory clause of section 497 Cr.P.C. Consequently, the case of the petitioner does not fall within the ambit of section 51 of the CNSA, 1997, read with section 497 Cr.P.C. for the purpose of bail consideration.

8. As far as the contention of learned counsel for the petitioner that the police conducted raid at

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the restaurant of the petitioner and he did not pay the bribe, which resulted into registration of the instant case and that he on the next day moved two applications to the high-ups of the police to inquire about his false implication is concerned, this question would be decided by the Trial Court after recording of the evidence. At bail stage deeper appreciation of evidence is not permissible rather tentative assessment is to be made from the available record.

9. The contention of learned counsel for the petitioner that the petitioner's case is borderline case is concerned, benefit of the same cannot be extended to the petitioner at bail stage in light of the order of three members Bench of this Court passed in Crl. Misc. No.431-B/2024 (approved for reporting but not yet published). The relevant portion is reproduced as under:-

> *"Having concluded that bail in criminal cases registered under the Act of 1997 has to be decided in light of section 51(1) of the Act of 1997 read with section 497, Cr.P.C., it is held that if a 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" developed in the context of erstwhile*

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> *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 at bail stage. This, however, shall not bar the Court adjudicating a bail petition to decide the same in light of peculiar facts and circumstances of a particular case."*

10. As far as the argument that no independent witness was associated and no video was made while making the recovery proceedings, section 25 of CNSA, 1997 excludes applicability of section 103, Cr.P.C in narcotics case, whereas as per record photographs were taken by the police while making the recovery in light of the observations made by the Honourable Supreme Court in ***Zahid Sarfaraz Gill vs. The State*** **(2024 SCMR 934)**.

11. Learned counsel for the petitioner has failed to establish any *malafide* or ill-will on the part of the police to falsely implicate the petitioner in the present case. Given the grave nature of offences under the CNSA, 1997 such crimes are considered heinous and constitute an offence against society as a whole. Reliance is placed upon ***Socha Gul vs. The State*** **(2015 SCMR 1077)**, which reaffirms

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the principles governing bail considerations in narcotics cases.

12. *Prima facie* there is sufficient material available on record, which establishes a connection between the petitioner and the commission of the alleged offence under the CNSA, 1997.

13. For the reasons discussed above, the petitioner is not entitled for grant of bail, therefore, the instant petition is hereby **dismissed.**

14. Needless to mention, the above observations are tentative in nature, which shall in no way prejudice the Trial Court.

(INAAM AMEEN MINHAS)
JUDGE

R.Anjam.

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