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

Crl. Misc No.355 of 2025

Mst. Saima Bibi alias Shama **Versus** The State.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge and that of parties or counsel, where necessary.
	27.02.2025	Mr. Muhammad Ashraf Khan, Advocate for the petitioner. Rana Zulfiqar Ali, Special Prosecutor ANF with Miss Rabia Fida S.I and Usama ASI, ANF.

Through the instant petition under Section 497 Cr.P.C., the petitioner seeks post-arrest bail in case FIR No.15, dated 21.01.2025, offence under Section 6, 9(1), 3(c) of the Control of Narcotic Substances Act, 1997 registered with Police Station ANF, Islamabad.

2. Precisely, the allegation against the petitioner is that from her possession, total 3600 grams Charas was recovered.

3. While reiterating the grounds of instant petition, learned counsel for the petitioner has laid much emphasis on the ground that petitioner is entitled to the relief of bail as she is accompanying with minor son in the jail. While arguing so, he relied upon case law titled as "Mst. Nusrat v. The State" (**1996 SCMR 973**), "Mst. Tahira Batool v. The State and another" (**PLD 2022 Supreme Court 764**), "Mst. Nadia v. The State" (**2023 YLR 171**), "Mst. Asiya v. The State and another" (**2023 SCMR 383**) and "Mst. Ishrat Bibi v. The State through Prosecutor General, Punjab and another" (**2024 SCMR 1528**).

4. Heard. Record perused.

5. As per contents of FIR, the petitioner was apprehended while in possession of three packets of Charas weighing 1200 gram each, total weighing 3600 gram. The recovery proceedings were also captured in video. The punishment of Charas 1000 grams to 4999

grams is imprisonment which may extend to fourteen years but shall not be less than nine years alongwith fine which may be up to four hundred thousand rupees but not less than eighty thousand rupees. Therefore, the alleged recovery clearly brings the case of the petitioner within the rigors contained in Section 9 (c) of the CNSA, 1997. Apparently no material is available to substantiate that such huge quantity of narcotics has been foisted upon the petitioner. There is nothing on record which could suggest that the complainant or any other member of the raiding party had any *animus* against the petitioner.

6. So far as the sole ground of learned counsel for the petitioner that she is entitled to bail as her suckling baby is also with her in jail, is concerned, it is observed that prime responsibility of better upbringing and welfare of children rests upon the parents. If anyone of the parents gets himself or herself involved in a crime, it cannot be said that he or she got indulged in the said crime by chance or inevitably against his or her intention. It is true that suckling babies should not be in a place like dungeons and there are chances of their future being spoiled, but at the same time, it is undeniably the responsibility of parents to keep it in mind that their intentional involvement in any crime shall bring about the harm to the personality of their child, and, it is equally true that parents certainly feel the pain when their child suffers. The material available on record is prima facie sufficient to connect the petitioner with the crime and learned counsel for the petitioner failed to point out any other substance from which this court could infer otherwise. Therefore, at present, there is nothing on record which could prima facie cast doubt on prosecution’s story qua recovery of huge quantity from

her possession. And, when this fact is prima facie established then the question is as to why she was carrying her minor child alongwith her at relevant time? There is nothing justifiable pointed out or available on record in this regard.

7. The drug peddlers have ruined the fabric of our society and they are masters of makeshifts for transportation of drugs from one place to another and using youngsters and women is one of their tricks for the purpose. This Court feels that it is time to deal with them with iron hands and to discourage their modes & methods for implanting drugs in our generation. In case titled "Mst. Nasira Bibi v. The State" (**PLD 1998 Lahore 146**), learned Division Bench of Lahore High Court observed that "*...this Court cannot help taking notice of the new modes deviced by human ingenuity for drug pushing and would not presume all virtues to a woman which was the hall mark of the age of chivalry. A woman is no longer domesticated but the hallow of respectability and modesty woven around the traditional woman is making her an easy conduct for many a undercover crimes. The Courts may refuse the bail if the allegations are serious and particularly under section 51 of the Narcotics Substances Act which provides that, "bail should not be normally granted", Criminal cases are not lacking when women were refused bail*. In "Mst. Taj Bibi v. The State" (**PLD 1989 Quetta 60**), the order cancelling bail to a woman was upheld by the Court and it was observed at page 61 as under:-

> "Thus females involved in such degenerated offences would not be automatically entitled to discretion merely by virtue of sex unless law so permits on merits."

Similarly view was taken in "Mst. Amna v. The State" (**PLD 1989 Kar 40**) and "Mst. Akhtar Bibi v. The State" (**1989 PCrl.LJ 83**).

8. Therefore, when factum of huge quantity of narcotics from the petitioner is evaluated in juxtaposition with the fact of non-pointation of any substance pulling the case of petitioner into ambit of further inquiry or any aspect which could *prima facie* establish the *malafide* on the part of prosecution, this Court finds that only ground of petitioner's having suckling baby with her is insufficient for grant of bail. In the case titled "Mst. Fursan v. The State" (**2022 SCMR 1950**), the august Supreme Court of Pakistan dismissed post arrest bail petition of a woman in narcotics case and while discussing case law titled "Mst. Tahira Batool v. State" (PLD **2022 SC 764**) in detail, held as under:-

> "8. The learned counsel for the State has, in the present case, pressed only the third exception, i.e., the likelihood of the petitioner to repeat the offence, on the basis of nature of the offence. This Court has described three circumstances in the Tahira Batool case that may be considered for deciding, whether or not there is likelihood of repeating the offence by the accused, which are: (i) his previous criminal record, (ii) nature of the offence, or (iii) manner of committing the offence. These circumstances are, as held by this Court in Iftikhar Ahmad v. State, only illustrative in character, and not exhaustive, and the courts may take into consideration "some other striking circumstance that impinges on the proceedings of the trial, or poses a threat or danger to the society" and thus brings the case of an accused within any of the said three settled exceptions to the rule.
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> 9. While examining the applicability of the third exception, relied upon by the learned counsel for the State, as to the likelihood of the repetition of the offence by the petitioner, we find that the offences relating to narcotic drugs are of such a nature that do indicate the likelihood of the repetition of the offence by the accused. Dealing in narcotic drugs is usually the business of the persons involved therein, and is not a spontaneous or one time act, and the women are often involved in it as carriers for the transportation, supply and sale of narcotic drugs. The likelihood of such an offence being repeated by the petitioner cannot, therefore, be ruled out. The case of the petitioner thus comes within the scope of the exception of

> likelihood of repeating the offence. The reliance of the learned counsel for the petitioner on Tahira Batool case is misconceived, as in the said case also the Court observed that "the persons involved in the commission of offences of robbery or dacoity are usually the professional criminal and there is likelihood that they would repeat the offence if enlarged on bail", and distinguished the case of Tahira Batool, the women accused in the case, because she was employed in the house of the complainant as a maid. Had this distinguishing fact not been there, her case might also have fallen within the exception of likelihood of repeating the offence because of the nature of the offence of robbery."

9. Furthermore, in case titled "Mst. NAZO v. The State" **(2013 MLD 1860),** while dismissing the post arrest bail of woman with suckling baby held as under:-

> "…The argument of the learned counsel for the petitioner that the accused/petitioner has a suckling baby and is also pregnant of four months is not convincing. Had the petitioner been concerned about her suckling baby, she would not have resorted to indulge in such activity which has afflicted our whole society and especially the younger generation. **Off late, the mafia engaged in narco-business has devised new modes and means of smuggling by employing ladies and youngsters in the hope that even if caught red handed, they may be extended the concession of bail by the courts on the ground of womanhood or juvenility as the case may be**. Such conduct amounts to taking liberty with the law of the land."
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> (Emphasis added)

10. Similarly, in case titled as "Malita Syed Shah v. The State" **(2009 YLR 1029),** learned Division Bench of Lahore High Court Lahore, dismissed the bail application of a female drug trafficker, who was apprehended from Air-Port and two minors were also with her at the relevant time. In the above titled case, it was observed as under**:-**

> "…It may also not be ignored that in case bail **in the narcotic case** is allowed for the reason of the custody of a little grownup children also, it may pave the way and provide a lever for malicious contentions on behalf of the female accused of possession or transportation of narcotics, for their release on bail…"

11. Prima facie, sufficient incriminating material is available on record to show the presence and

connectivity of the petitioner with the alleged crime. From the tentative assessment of the material produced before the Court, this Court is of the considered view that petitioner is clearly connected with the alleged crime and bar in terms of Section 51 of the CNSA, 1997 is fully attracted to his case. The facts & circumstances of the case laws relied upon by the learned counsel for the petitioner are inapt to the facts & circumstances of instant case.

12. For the foregoing reasons, I find no merit in the instant petition. Consequently, the same is ***dismissed.*** *However, the learned Trial Court shall conclude the trial expeditiously as early as possible even at the cost of day-to-day proceedings in view of the special circumstances of this case as the petitioner is in jail alongwith her suckling baby.*

(**ACTING CHIEF JUSTICE**)

Shamroz Ali

APPROVED FOR REPORTING

(**ACTING CHIEF JUSTICE**)