

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Bail Application No.S-50 of 2025.

Sameer Khan v. The State.

Applicant : Sameer Khan through Mr. Ishrat Ali Lohar, Advocate.
Respondent : The State through Mr. Shahriyar Shar, Special Prosecutor for ANF.
Date of Hearing : 12.03.2025.
Date of Decision : 14.03.2025.

ORDER

Miran Muhammad Shah, J:- Through instant Bail Application, the applicant/accused namely, Sameer Khan s/o Abdul Latif Jagsi seeks post-arrest bail in Crime No.52/2024, registered at Police Station ANF, District Hyderabad for offence U/s 6, 9(i) 3-C CNSA, 1997. Earlier the bail plea of the applicant/accused was declined by the learned Additional Sessions Judge-II/Special Judge CNS, Hyderabad vide order dated 09.01.2025.

2. In short, the facts as incorporated in the FIR are that on 22.11.2024 at about 1600 hours, police party of PS ANF, Hyderabad headed by Inspector Dawood Munawar arrested the applicant/accused from Fateh Chowk road leading from Badin towards Hyderabad and recovered 03 Kilograms of chars from his possession, hence an FIR was lodged against the present applicant/accused.

3. Learned counsel for the applicant/accused has argued that the applicant/accused is innocent and has not committed an offence as alleged in the FIR, and the allegations against the applicant/accused are false, fabricated & concocted; that the prosecution has failed to establish any credible connection between applicant/accused and recovered contraband charas; that there is no independent evidence to substantiate the applicant's/accused involvement in the alleged offence despite the fact that incident took place during broad day light on a public round about, and the entire recovery and seizure process was not video-graphed, despite it being conducted in a public area. The lack of visual documentation raises doubts about the transparency and fairness of the recovery process as laid down by Honourable Apex Court in **Zahid Sarfaraz Gill** case. He has further argued that the mandatory provision of Section 21(2) was not adhered by complainant which shows his malice and malafide against the applicant/accused; that no attempt or efforts were taken to trace out the alleged customer who was reportedly waiting to receive the contraband,

which requires serious doubts about the veracity of the prosecution's claim. Lastly, he prayed that the Bail Application of applicant/accused may be allowed, and he may be admitted to bail. He made his reliance upon an unreported Judgment of Honourable Supreme Court of Pakistan in Criminal Petition No.146 of 2025 & case report as 2024 SCMR 934.

4. On the other hand, learned Special Prosecutor for ANF has vehemently opposed the bail application of applicant/accused and argued that the applicant/accused was arrested on the spot and a huge quantity of contraband (چرس) was recovered from his possession, which was subsequently sent to chemical examiner, and such report is positive, therefore, he is not entitled for concession of bail. He lastly prayed to dismiss the bail application of applicant/accused.

5. Heard learned counsel for the applicant/accused, learned Special Prosecutor for ANF & perused the available record.

6. It is transpired that undoubtedly the arrest of the applicant/accused was made during broad day light from a public round about and allegedly, the recovery of 3-K.G of charas was made from him. Despite this fact, no public mashir was associated with the recovery process. It is also transpires that settled criteria has been laid down by the Honourable Supreme Court of Pakistan in the case of **Zahid Sarfaraz Gill v. The State, reported as 2024 SCMR 934**, where and when such recoveries are affected, ANF Police has been directed to follow certain procedures of taking photographs and videos. The Honourable Supreme Court had observed as under;

"5. We are aware that section 25 of the Act excludes the applicability of section 103 of the Code of Criminal Procedure, 1898 which requires two or more respectable inhabitants of the locality to be associated when search is made. However, we fail to understand why the police and members of the Anti-Narcotics Force ('ANF') do not record or photograph when search, seizure and/or arrest is made. Article 164 of the Qanun-e-Shahadat, 1984 specifically permits the use of any evidence that may have become available because of modern devices or techniques, and its Article 165 overrides all other laws.

6. In narcotic cases the prosecution witnesses usually are ANF personnel or policemen who surely would have a cell phone with an in-built camera. In respect of those arrested with narcotic substances generally there are only a few witnesses, and most, if not all, are government servants. However, trials are unnecessarily delayed, and resultantly the accused seek bail first in the trial court which if not granted to them is then filed in the High Court and there too if it is declined, petitions seeking bail are then filed in this Court. If the police and ANF were to use their mobile phone cameras to record and/or take photographs of the search, seizure and arrest, it would be useful evidence to establish the presence of the accused at the crime scene, the possession by the accused of the narcotic substances, the search and its seizure. It may also prevent false allegations being levelled against ANF/police that the narcotic substance was foisted upon them for some ulterior motives.

7. Those selling narcotic substances make their buyers addicts, destroy their state of mind, health and productivity, and

adversely affect the lives of their family members. The very fabric of society is damaged. ANF and the Police forces are paid out of the public exchequer. It is incumbent upon them to stem this societal ill. The Prosecution services, paid out of the public exchequer, is also not advising the ANF/police to be do this simple act of making a recording and/or taking photographs as stated above”.

7. Again in a very recent Judgment passed by the Honourable Supreme Court of Pakistan in an un-reported Criminal Petition No.146 of 2025, the Honourable Supreme Court of Pakistan again reiterated its stance by observing as under;

“6. In the present case neither any video in the shape of recording and photographs of the alleged recovery has been collected by the police nor any private witness from the locality was associated to prove the alleged recovery from the possession of the petitioner. As stated above, the use of modern devices during recoveries is not merely a procedural formality but a crucial safeguard to protect innocent persons from potential police atrocities. It provides an objective and unbiased account of the recovery process, reducing the risk of false implications and ensuring that the rights of the accused are protected. In the cases of stringent punishments, the prosecution must present clear, cogent and reliable evidence to prove the accused’s guilt beyond a reasonable doubt. In the absence of video evidence and independent witnesses, the prosecution’s case relies heavily on the testimony of the police officers involved in the raid, which is insufficient to meet the required standard of proof.”

8. However, it is observed that the federal agency is continuing to ignore these Judgments/observations/directions/criteria established by the Honourable Supreme Court of Pakistan for the process of recovery of Narcotics such shortcomings tantamount to willful disobedience/violation of the directions of the Honourable Apex Court. The ANF Sindh is expected to formulate the policy at its earliest in light of the directions passed in the case of **Zahid Sarfaraz Gill v. The State, reported as 2024 SCMR 934.**

9. Due to such violations I am of the tentative view that despite a heavy recovery, but due to non-following of the criteria, the case of the applicant/accused is made out for bail. Consequently, instant Criminal Bail Application is **allowed** and applicant/accused is admitted to bail subject to his furnishing solvent surety in the sum of Rs.300,000/- (Rupees Three Lac only) and P.R Bond in the like amount to the satisfaction of learned trial Court.

10. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicant/accused on merits.

JUDGE