

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 724 of 2025

Applicant : Arif Gul son of Khan Gul
Through Mr. Kamran Ali Abro, learned advocate

Respondent : The State
through Mr. Sarfaraz Ali Mangi, Special
Prosecutor ANF.

Date of hearing : 08.04.2025

Date of order : 17.04.2025

ORDER

KHALID HUSSAIN SHAHANI, J. The applicant Arif Gul seeks post-arrest bail in a case bearing crime No. 59/2024, offence u/s 9(2), Sr. No. 4, 14 & 15 of the Control of Narcotic Substances Act, 1997 (as amended by Act of 2022), of Police Station ANF MACHS, Karachi. His earlier bail plea was declined by the learned Special Court-I, CNS, Karachi, vide order dated 24.02.2025.

2. Briefly stated, the facts of the prosecution case, as narrated in the FIR, are that on 23.08.2024 at about 0050 hours, Sub-Inspector Muhammad Saleem of MACHS, Anti-Narcotics Force (ANF), Korangi, Karachi, acting upon prior information received from one Kashif Mughal, the Manager, UPS Courier Services, Shahrah-e-Faisal Branch, Karachi, proceeded to the said location along with his subordinate staff. The information pertained to a suspicious parcel received at the courier company's Clifton branch, destined for New Zealand. Upon arrival, ANF officials asked the aforementioned Manager to act as a witness to the inspection and seizure proceedings, but he reportedly declined. Consequently, the ANF personnel conducted the search and seizure operation themselves, acting as mashirs. The parcel in question was found booked under the name of Arif Gul (the applicant) and addressed to one Marley Morgan, care of Wall Board & Insulation Services, Christchurch, New Zealand. The consignment ostensibly contained various sports goods; however, upon inspection, five out of eighteen hockey balls were discovered to be hollowed out and found to conceal a substance later identified as Ice Methamphetamine, weighing about 400 grams. Based on these circumstances, a criminal case was registered inter-alia on above facts.

3. Learned counsel mainly contended that the applicant has been falsely implicated in the case with mala fide intent and for ulterior motives. It was argued that the recovery of narcotics was not made from the applicant's exclusive possession or control, nor has any direct evidence been brought on record linking the applicant with the consignment in question. The prosecution has relied upon an undertaking allegedly dated 03.03.2023 in support of the present offence, which allegedly occurred on 14.04.2021, without conducting any forensic verification of the applicant's signatures through a handwriting expert, thereby raising serious doubts as to its evidentiary value. Furthermore, the fact that the courier company's Manager bypassed standard protocol, by reporting directly to ANF instead of contacting the local police station or dialing emergency helpline '15', casts further doubt upon the credibility and propriety of the initial complaint. The absence of CCTV footage or photographic evidence to show the applicant's presence at the courier office, coupled with the non-association of any independent witnesses, such as the stamp vendor or courier staff, at the time of recovery proceedings, severely weakens the prosecution's case. Additionally, no CDR was obtained to ascertain the applicant's presence at the relevant time and location, and the booking receipts relied upon by the prosecution is devoid of traceable identification numbers or biometric data. It was further submitted that even assuming the existence of booking receipts, in the absence of corroborative material or independent evidence, the same cannot be treated as conclusive proof of guilt. In view of these infirmities, it was urged that the matter warrants further inquiry under Section 497(II) Cr.P.C.

4. Conversely, the learned Special Prosecutor ANF opposed the application for bail, asserting that the applicant was the individual who had booked the parcel containing Methamphetamine (Ice). It was submitted that a private witness had identified the applicant as the person who dispatched the consignment. The Prosecutor further emphasized that there existed no allegation of mala fide or personal animosity on the part of the ANF officials to suggest false implication. It was additionally argued that the applicant is a habitual offender, previously involved in dispatching narcotic substances through courier services, and therefore does not deserve the concession of bail.

5. From the factual matrix available on record, it appears that the ANF action was initiated solely on the basis of information provided by a private individual, namely Kashif Mughal, the Manager of UPS Courier Services.

However, despite being the source of the initial intelligence and playing a pivotal role in triggering the investigation, he has neither been cited as a prosecution witness nor examined during the course of the inquiry. No plausible explanation has been furnished by the prosecution for this omission. It is further notable that the said Manager did not report the matter through the local police station or the emergency helpline '15', as is the standard protocol, but instead directly contacted a specialized federal agency. This deviation raises concerns regarding the integrity of the information chain and the procedural propriety of the recovery operation conducted by the ANF.

6. Moreover, despite UPS Courier being a reputed and internationally affiliated logistics company, the prosecution has not produced CCTV footages to establish the identity of the individual who booked the parcel. No timestamp, booking reference, or video evidence has been provided to confirm the time, location, and manner in which the parcel was handed over. Even, no documentary material has been brought on record to demonstrate whether any standard screening or sender verification process was undertaken. This absence of basic compliance with standard operational protocols, *prima facie*, raises legitimate doubts as to the veracity of the prosecution's version, needing further enquiry during the trial.

7. Valuable guidance in this regard may be derived from the judgment of the Hon'ble Supreme Court in *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934), wherein the apex Court underscored the evidentiary importance of modern investigative tools such as video recordings and photographic documentation, especially in cases hinging primarily on official witnesses. It was held that in the absence of such corroborative material, particularly where recovery is alleged from a commercial premises during daylight hours, the prosecution's case may be rendered doubtful and thus become amenable to further inquiry within the contemplation of Section 497(II) Cr.P.C.

8. Another aspect that casts further doubt is the implausibility that a person intending to smuggle narcotics internationally would use his real name and accurate parentage on the shipment manifest. Additionally, although the alleged recovery was affected at a commercial courier outlet where multiple employees were presumably present, no independent witness from among them was associated at the time of seizure. This omission further strikes at the transparency of the proceedings.

9. The Court is also constrained to observe a serious procedural lapse on the part of the investigating agency with respect to sampling of the seized substance. As per the recovery memo, only four samples of 10 grams each, totaling 40 grams, were drawn from the recovered contraband, which was allegedly concealed in five physically separate hockey balls. It is now a well-settled principle of law, reaffirmed by the Supreme Court in *Sharafat Khan v. The State* (PLD 2022 SC 281), that representative samples must be obtained from each independent unit or container. Failure to follow this requirement renders the sampling defective, undermines the evidentiary value of the chemical analysis report, and constitutes a violation of the accused's fundamental right to fair trial under Article 10-A of the Constitution.

10. The cumulative effect of the aforementioned infirmities, including the non-citation of the courier company manager and staff as witnesses, lack of independent corroboration, absence of technical and electronic evidence, deviation from standard investigative protocols, and procedural irregularities in sampling, leads to the inescapable conclusion that the case against the applicant calls for further inquiry within the meaning of Section 497(II) Cr.P.C. Consequently, the applicant is admitted to post-arrest bail, subject to furnishing a solvent surety in the sum of Rs.300,000/- (Rupees Three Hundred Thousand only) and a personal bond in the like amount to the satisfaction of the learned trial Court. It is clarified that the foregoing observations are tentative in nature and confined to the present bail proceedings. The learned trial Court shall evaluate the evidence independently and uninfluenced by these remarks at the time of final adjudication.

11. While parting with this order it is observed that if courier companies are not regulated with strong, enforceable mechanisms, the legal system will continue to see false implications, real offenders will exploit loopholes, and ANF operations will be compromised. All courier companies are legally obligated to obtain and record: valid CNIC/passport copy of sender; photograph of sender, biometric verification (linked with NADRA, where possible); contact details including traceable phone number. For real-time CCTV Surveillance, the companies must install CCTV cameras for retention of CCTV footage at all dispatch counters, with a minimum 90-day retention period for footage. The video should cover, parcel handover, face of sender, sealing of package. Courier branches to maintain monthly dispatch logs for ANF and police review. Courier companies must use

digitally integrated systems (like banking KYC) that log: exact time and location of booking; person on counter; GPS data; IP address if booked online. Copy of this order be sent to Director General ANF for information and necessary action for compliance through the concerned regulatory authority.

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