

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Crl. Bail Application No. S-136 of 2025
(Gulzar Hussain Vs. The State)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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- 1. For Orders on office objection at flag “A”
- 2. For hearing of Bail Application

13-03-2025.

Mr. Manzoor Hussain Larik, Advocate for the applicant.
Syed Sardar Ali shah Rizvi, Addl: Prosecutor General.

ALI HAIDAR “ADA”, J.-. The applicant seeks his post arrest bail in crime No. 48/2025, registered at Police Station “B” Section Khairpur for offence punishable under section 9(b) of Control of Narcotics Substance (Amendment) Act-2022, as his post arrest bail was declined by the Learned Additional Sessions Judge-I/(NCTC)/Special Judge for (CNS) Khairpur vide order dated 10-02-2025, which he has impugned by preferring the instant Crl. Bail Application.

2. The brief facts of the Prosecution Case inter alia are that on 27-1-2025 the police party headed by ASI Bux Ali Shahani during patrolling reached at the street of Nizamani Mohallah, wherein saw the applicant who tried to escaped, so, on his suspicious movement the police party apprehended accused/applicant, as due to non-presence of private mashir the said ASI appointed his subordinate staff as mashir and in their presence recovered hemp/bhang weighing 3000 grams lying in black color shopper from his possession, then after prepared memo of arrest and recovery and later on, registered the FIR.

3. The Learned Counsel for the applicant submits that applicant is innocent and has falsely been implicated in this case; that property was foisted upon him as neither video recording was taken by police party nor private persons were cited as witness, the offence does not falls under prohibitory clause and there is delay of 15 days for sending the sample to Chemical Examiner, lastly he prays for grant of post arrest bail.

4. Learned Additional Prosecutor General supports the order of trial Court and further added that recovery is effected from physical possession of the applicant; therefore he is not entitled for concession of bail.

5. As per prosecution, the incident occurred at street of Nizamani Mohallah, the place of incident is densely populated as indicated by Memo of occurrence. Reliance is placed upon the cases of ***Ismail Vs. The State reported as 2023 MLD 942, Muhammad Amir Vs. The State (2022 MLD 1538) and Ali Khan Vs. The State (2022 P.Cr.L.J 690).***

6. The FIR was registered on 27-01-2025, while the contraband sample was sent to the Chemical Examiner on 12-02-2025, resulting in a delay of 15 days without any explanation. It reveals that Investigation Officer terribly failed to adhere to the strict compliance of the provisions of Control of Narcotics Substances (Government Analysts) Rules 2001, particularly sending of sample for analysis more than 03 days. In this regard Rule 4 of said Rules is reproduced:-

4. Despatch of Sample for test of analysts (1) *Reasonable quantity of samples from the Narcotic drugs psychotropic substances or the controlled substances seized, shall be drawn on the spot of recovery and despatched to be officer-incharge of nearest Federal Narcotic Testing Laboratory, depending upon the availability for test facilities, either by insured post or through special messenger duly authorized for the purpose.*

(2). *Samples may be despatched for analysis under the cover of Test Memorandum specified in Form-1 at the earliest, but not later than seventy-two hours of the seizure. The envelope should be sealed and marked "Secrete Drug Sample/Test Memorandum".*

7. It becomes crystal clear that the recovered contraband needs to be sent by Investigation agency within 3 days from the date of recovery to the laboratory, whereas in instant case, such requirement has not been complied with by the investigation agency, which creates serious doubt upon prosecution until and unless give cogent reasons for such delay. It is well established law that doubt, if arises then it should go in

favour of accused even at bail stage, reliance is placed on the case of ***Naveed Sattar Vs. The state 2024 SCMR 205.***

8. The witness cited in FIR are police officials, hence there is no any apprehension of tempering with the evidence.

9. In view of the foregoing reasons, the applicant has make out a case for grant of post arrest Bail. Accordingly, instant Bail application is allowed and applicant Gulzar Hussain S/o Fida Hussain by caste Makrani is admitted to post arrest Bail subject to furnishing his solvent surety in the sum of Rs. 50,000/- and P.R Bond in the like amount to the satisfaction of Learned trial Court.

10. Needless to mention that the observation made hereinabove are tentative in nature and shall not prejudice the case of either party at the time of trial.

J U D G E

Nasim/P.A