

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Bail Application No.D-102 of 2026

PRESENT

Mr. Justice Jawad Akbar Sarwana.

Mr. Justice Syed Fiaz ul Hassan Shah.

Applicant: Hussain Bux son of Muhammad Ismail,
Through Mr. Imam Ali Chang, Advocate.

Respondent: The State
Through Ms. Rameshan Oad, D.P.G.

Date of hearing: 20.05.2026

Date of decision: 25.05.2026

ORDER

Syed Fiaz ul Hassan Shah, J: The applicant was booked in Crime No. 138 of 2025 registered at P.S Saeedabad on the allegation that police party headed by ASI Anwar Ali during patrolling on 10.11.2025, when reached at Benazir Chowk they received spy information that at the link road going towards Rahuja Mori near Hussain Bux Chang village, a man (applicant/accused) is standing with huge quantity of charas for selling hence they arrived at pointed place and saw one person (applicant/accused) holding black plastic bag standing there, on search police recovered 05 packets of charas and one small piece were found which were wrapped in khaki paper, and found total 1270 grams of charas, hence, this FIR.

2. It is inter-alia contended by the counsel for applicant that applicant/accused is innocent and has falsely been involved in this case; that the applicant is a first-time offender and pointed out procedural lapses, specifically that the recovered contraband was sent for chemical examination after a considerable delay; that no video recording was carried out by the prosecution and therefore principal laid down in the case of *Muhammad Abid Hussain vs the State and another (2025 SCMR 721)*, *Zahid Sarfaraz Gill vs the State (2024 SCMR 934)*, the applicant is entitled for the concession of post arrest bail; that applicant was arrested since 10.11.2025 and since then the case has not been proceeded and he is facing incarceration without any fruitful development in the case; that no independent witness was arranged at the time of alleged recovery of the narcotic thereby section 103 was violated; that challan has been submitted before the Trial Court, the

applicant is no more required for investigation and there is no apprehension that the applicant is attempting to temper or destroy the prosecution's evidence.

3. On the other hand, the learned DPG for the State opposed the bail application on the grounds that the applicant was nominated in the FIR with specific role and was arrested on the spot in possession of narcotics; therefore, at this stage, he is not entitled to the concession of bail. She further contended that the **principles** laid down in the cases relied upon by the counsel for the applicant do not establish that applicant is entitled to bail solely due to the absence of video recording. She argued that offence carries a punishment ranging from 9 to 14 years. Citing a recent unreported judgment of the Hon'ble Supreme Court (**Criminal Petition No. 150-K/2024**), she maintained that when considering a bail application, only the maximum statutory punishment should be considered. Thus, while the lesser punishment may fall under the non-prohibitory clause, the maximum punishment brings the case within the prohibitory clause.

4. We have heard the learned counsel for the parties and perused the record.

5. It is an undisputed fact that the prosecution failed to produce any video recording of the personal search, seizure, or recovery of the alleged contraband, nor was such recording referenced in the Memorandum of Recovery prepared at the crime scene by the police. We observed that video recording during Recovery proceedings in Narcotics cases is a statutory duty which is codified under Section 17(2) of the Sindh CNS Act, 2024. This omission stands in direct conflict with the judicial standards articulated by the Hon'ble Supreme Court in the precedents cited by the applicants' counsel, particularly Zahid Sarfraz Gill (*supra*) and Muhammad Abid (*supra*). Both cases underscore the necessity of adhering to modern evidentiary practices to ensure transparency and credibility. Such deficiency of photography and videography caused for further inquiry in narcotics proceedings. While we are in agreement with the learned DPG that, per the dictum of the Hon'ble Supreme Court, the maximum punishment should be considered at the bail stage, the prohibitory clause does not act as an absolute bar. Bail may still be granted based on well-recognized principles, such as the existence of reasonable grounds for further inquiry, the presence of *mala fides*, or where the evidence suffers from glaring infirmities or statutory violations. Besides, DPG conceded as per CRO, the applicant is first offender and not involved in any criminal cases except the present one.

6. The applicant has remained in custody for the past more than nine months. It is a well-established "golden principle" of criminal justice that while the conviction of a guilty person may ultimately remedy an erroneous grant of bail, no adequate reparation can ever be afforded to an innocent individual for unjustified incarceration, even if acquittal is eventually secured. This principle, first enunciated in **Manzoor v. The State (1972 PLD**

SC 81), has been consistently upheld by the Hon'ble Supreme Court. In light of this jurisprudence, the applicant is accordingly extended the concession of post arrest bail in the sum of Rs.200,000/-, with a P.R. bond in the like amount, to the satisfaction of the learned trial Court.

7. Needless to observe that any finding recorded herein-above are tentative in nature for the purpose of deciding this bail application, and the trial Court will not be influenced with it and will try the case in accordance with law.

J U D G E

J U D G E

Ahmed/Pa,