

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Bail Appln. No. D-128 of 2025

Before:

*Mr. Justice Amjad Ali Bohio, J.*

*Mr. Justice Jawad Akbar Sarwana, J.*

Applicant : Muhammad Anwar Laghari @ Anu son of Abdul Karim Laghari, Through Mr. Farhad Ali Abro, Advocate

The State : Through Mr. Altaf Hussain Khokhar, Deputy P.G

Date of Hearing : 31.12.2025

Date of Order : 31.12.2025

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ORDER

AMJAD ALI BOHIO, J: The applicant/accused, Muhammad Anwar Laghari, seeks post-arrest bail in Crime No. 72 of 2025, registered at Police Station Bulri Shah Karim, for offences punishable under Sections 9(i), (3) and (C) of the Control of Narcotic Substances Act, 1997. Earlier, his bail application was dismissed by the learned Sessions Judge/Special Judge for C.N.S.A., Tando Muhammad Khan, vide order dated 30.08.2025.

2. According to the prosecution case, the applicant was apprehended by a police party headed by SIP Muhammad Aslam Kaka on 22.04.2025 at about 1800 hours, near Simnali Mori of village Bachal Shah. It is alleged that four kilograms of charas, which the applicant was transporting on a motorcycle in a black-coloured plastic shopper, were

recovered from his possession in the presence of mashirs HC Mushtaque Ali and PC Aurangzeb. Subsequently, the present F.I.R. was lodged.

3. Learned counsel for the applicant argued that the alleged narcotic substance was foisted upon the applicant with mala fide intention and ulterior motives. It was contended that the recovery proceedings are defective due to the non-association of independent private witnesses from the locality, and that the mashirs cited are police officials subordinate to the complainant. Learned counsel submitted that the deliberate omission to associate independent witnesses casts serious doubt on the genuineness, credibility, and truthfulness of the prosecution story. It was further argued that the case calls for further inquiry, entitling the applicant to the concession of bail. Learned counsel submitted that the applicant has been in custody since his arrest and cannot be detained for an indefinite period, particularly when there is no likelihood of commencement of trial in the near future. It was also contended that the applicant has already been remanded to judicial custody and is no longer required for further investigation. There is no reasonable apprehension that the applicant would abscond, tamper with the evidence, or intimidate prosecution witnesses. In support of his contentions, learned counsel placed reliance upon the order passed by the Hon'ble Supreme Court of Pakistan in Criminal Petition No. 150-K of 2024.

4. Conversely, learned Deputy Prosecutor General, Mr. Altaf Hussain Khokhar, advanced forceful and comprehensive arguments on behalf of the State. He submitted that the recovery of four kilograms of

charas constitutes a massive and staggering quantity, placing the case in the most serious category of narcotics offences. He argued that the applicant has failed to substantiate any credible claim of mala fide, enmity, or ulterior motive on the part of the police officials. Learned D.P.G. further contended that the plea regarding the applicability of Section 17(2) of the C.N.S. Act is a matter to be determined at the stage of recording of evidence during trial. He emphasized that Section 20 of the C.N.S. Act excludes the application of Section 103 Cr.P.C. and, therefore, prayed for dismissal of the bail application.

5. We have heard learned counsel for the parties and have carefully perused the material available on record.

6. One of the most significant lacunae in the present case is the complete absence of video recording of the alleged recovery proceedings. In the modern age of technology, where mobile phones equipped with video recording facilities are ubiquitously available and are routinely carried by police officials during their official duties, the failure to record the recovery of such a substantial quantity of contraband is not only inexplicable but also raises serious doubts about the veracity of the prosecution case. The importance of video recording in narcotics cases has repeatedly been emphasized by the superior courts of this country. The ratio decidendi emerging from various judgments establishes that video recording serves multiple purposes, including: (i) ensuring transparency in recovery proceedings; (ii) providing independent and irrefutable evidence of the circumstances of recovery; (iii) protecting innocent persons from false implication; (iv)

safeguarding police officials against allegations of planting evidence; and

(v) preserving the chain of custody of the recovered substance.

7. In the instant case, no explanation whatsoever has been offered by the investigating agency for its failure to conduct video recording, despite the fact that the alleged incident occurred at about 1800 hours, affording sufficient time and opportunity for such recording. The prosecution has remained silent on this crucial aspect, which, in the considered opinion of this Court, constitutes a serious procedural irregularity materially affecting the credibility of the prosecution case.

8. Another cardinal infirmity in the prosecution case relates to the delay in dispatch of the sample and the lack of explanation regarding its safe custody and transmission for chemical examination. It is an admitted position that the F.I.R. was registered on 22.04.2025, whereas the sample parcel was dispatched vide memorandum No. 72/025 dated 24.04.2025 through PC Allah Jurio, but was delivered to the chemical examiner on 25.04.2025. Consequently, the sealed parcel did not remain in explained safe custody during the intervening period from 24.04.2025 to 25.04.2025. Learned Deputy Prosecutor General failed to offer any explanation regarding the safe custody of the sealed sample during this period, which creates serious doubt about the sanctity of the chemical examination report, thereby entitling the applicant to the benefit of further inquiry.

9. The object and rationale behind strict adherence to the prescribed time limits for dispatch of samples is to ensure: (i)



preservation of the integrity of the sample; (ii) maintenance of an unbroken chain of custody; (iii) prevention of tampering or substitution; and (iv) expeditious scientific verification of the nature of the recovered substance.

10. Moreover, where the total quantity allegedly recovered is neither huge nor unmanageable, and yet only an insignificant portion is transmitted to the laboratory without any plausible justification, an adverse inference is liable to be drawn against the prosecution. Such selective and partial transmission gives rise to a strong suspicion of manipulation and exaggeration of the alleged quantity. Another serious infirmity in the prosecution case is the complete absence of independent witnesses from the locality. It is an admitted position that

- (i) *The alleged incident occurred at 1700 hours in broad daylight*
- (ii) *The place of incident is a link road connecting DhukarShaakh to JhandoShaakh Road, which is a public thoroughfare*
- (iii) *The area is not described as desolate or uninhabited*
- (iv) *Recovery of 7.7 kilograms of contraband is claimed to have been made*

11. Despite the availability of the locality and the alleged recovery having been effected in broad daylight on a public road, no independent witness was associated with the recovery proceedings. All the witnesses cited by the prosecution are subordinate staff of the complainant, ASI Mumtaz Ali Ujjan, namely HC Imdad Hussain Khaskheli and PC Riaz Hussain Wassan. These witnesses are admittedly interested witnesses, being subordinates working under the command and supervision of the complainant. Section 103 Cr.P.C. mandates that

searches shall be conducted in the presence of two or more respectable inhabitants of the locality in which the place to be searched is situated. The object of this provision is to ensure transparency and to provide independent corroboration to the prosecution story. The learned D.P.G. has contended that Section 25 of the Control of Narcotic Substances Act, 1997 excludes the requirement of associating independent witnesses in narcotics cases. While it is true that Section 25 provides certain exclusions, the same cannot be invoked arbitrarily or mechanically in every case to justify complete non-compliance with Section 103 Cr.P.C. The prosecution is required to demonstrate circumstances rendering the association of independent witnesses difficult or impossible. In the present case, no such circumstances have been shown. The unexplained absence of independent witnesses, when considered cumulatively with the other procedural irregularities discussed hereinabove, further weakens the prosecution case.

**12.** Moving forward, the legislative intent embedded within the Sindh Control of Narcotic Substances Act, 2024 (as amended in 2025), particularly Sections 16, 17, 17(2), 35(1), and 35(2), holds decisive significance. These provisions are not mere procedural formalities but constitute substantive statutory obligations designed to ensure transparency in police conduct, accountability to law, evidentiary integrity and reliability, prevention of false implication and abuse of authority, and the advancement of the rule of law. A watershed amendment introduced in 2025 has fundamentally altered the legal landscape governing bail in narcotics cases. Section 35(1), in its original

form, imposed an absolute bar on the grant of bail by providing that, "*Notwithstanding anything contained in Sections 496 and 497 of the Code, bail shall not be granted to an accused person charged with an offence under this Act.*" However, the amended Section 35(2) has introduced a critical exception by restoring judicial discretion and constitutional safeguards. It provides that where, at any stage of investigation, inquiry, or trial, the Court finds sufficient grounds for further inquiry into the guilt of an accused arrested under the Act, such accused shall be released on bail pending such inquiry. The phrase "sufficient grounds for further inquiry" does not require the Court to conclude that guilt is improbable or that acquittal is likely. Rather, it obligates the Court to examine whether the prosecution case, as presently investigated and presented, suffers from deficiencies or lacunae necessitating deeper scrutiny during trial. Non-compliance with mandatory statutory safeguards, such as the requirement of video recording under Section 17(2), constitutes a material ground for further inquiry, as such non-compliance undermines the reliability of the prosecution version, prevents objective verification of police conduct, raises concerns of deliberate circumvention of statutory protections, and lays the foundation for reasonable doubt regarding the alleged recovery.

13. The Hon'ble Supreme Court of Pakistan, in the landmark judgments of *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934) and *Muhammad Abid Hussain v. The State* (2025 SCMR 721), has consistently held that procedural fairness, technological modes of evidence collection, and constitutional protections form the foundational pillars

upon which narcotics prosecutions must rest, ensuring that neither innocent persons are wrongfully convicted nor guilty individuals escape accountability due to deficient investigation.

14. For the foregoing reasons, we are of the considered opinion that the applicant was entitled to the concession of bail. Accordingly, the bail application was allowed and the applicant was admitted to bail, subject to furnishing solvent surety in the sum of Rs. 100,000/- (Rupees One Hundred Thousand Only) along with a P.R. bond in the like amount to the satisfaction of the learned trial Court, vide short order dated 31.12.2025.

15. It is clarified that the observations made hereinabove are tentative in nature and shall not prejudice the merits of the case during trial.

16. These are the reasons for the short order dated 31.12.2025.



A handwritten signature in black ink, appearing to read 'X-12-26' above the word 'JUDGE'.

JUDGE

Ahmed/Pa,