IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Bail Appln. No. D-171 of 2025

Before:

Mr. Justice Amjad Ali Bohio, J.
Mr. Justice Jawad Akbar Sarwana, J.

Applicant	:	Saif-ul-Rehman son of Illahi Bux Shaikh, *Through* Mr. Mashooque Ali Mahar, Advocate
The State	:	*Through* Altaf Hussain Khokhar, Deputy P.G
Date of Hearing	:	31.12.2025
Date of Order	:	31.12.2025

****

ORDER

AMJAD ALI BOHIO, J: The applicant/accused, Saif-ul-Rehman, seeks post-arrest bail in Crime No. 05 of 2025, registered at Police Station Excise & Narcotics Control, Jamshoro, for offences punishable under Sections 9(i), 9(iii) (d) of the Control of Narcotic Substances Act. Earlier, his bail application was dismissed by the learned Additional Sessions Judge-I, Kotri, vide order dated 03.09.2025, passed in Criminal Bail Application No. 926 of 2025.

2. According to the prosecution, the applicant was apprehended by a police party headed by ETNCI Piyaro Khan Rind on 20.05.2025 at about 05:30 p.m. on Super Highway Road, Jamshoro, during checking of a bus bearing registration No. JB-7200. The police found the applicant sitting on a seat with a black-coloured bag resting on his lap. Upon checking, five packets wrapped with yellow plastic tape were recovered, which, upon further inspection, were found to contain charas wrapped in transparent white plastic. Each packet weighed 1200 grams, and in

total 6000 grams of charas was allegedly recovered from the applicant in the presence of mashirs E/C Gulab and E/C Allah Bachayo. Thereafter, the above-mentioned FIR was registered.

3. Learned counsel for the applicant contended that the alleged narcotic substance was falsely foisted upon the applicant with mala fide intention and ulterior motives. He argued that the recovery proceedings are defective due to the non-association of independent private witnesses from the general public, despite the fact that other passengers were present in the bus at the relevant time. The mashirs associated with the arrest and recovery are police officials and subordinates of the complainant. The deliberate omission to associate independent witnesses creates serious doubt regarding the genuineness, credibility, and truthfulness of the prosecution's version. Learned counsel further submitted that the case against the applicant requires further inquiry, thereby entitling him to the concession of bail. He argued that the applicant has remained in custody since his arrest and cannot be detained for an indefinite period, particularly when there is no likelihood of the trial commencing in the near future. Since the applicant has already been remanded to judicial custody, he is no longer required for the purpose of further investigation. It was further contended that there is no reasonable apprehension that the applicant would abscond, tamper with the evidence, or intimidate the prosecution witnesses. In support of his arguments, learned counsel placed reliance upon the order passed by the Honourable Supreme Court of Pakistan in Criminal Petition No. 150-K of 2024.

4. Conversely, learned Deputy Prosecutor General, Mr. Altaf Hussain Khokhar, opposed the bail application and submitted that the recovery of six kilograms of charas from the applicant represents a massive and staggering quantity, placing the case

within the most serious category of narcotic offences. He emphasized that the applicant has failed to substantiate any credible claim of mala fide or enmity on the part of the police officials. Learned DPG further argued that the applicant has not raised any plausible allegation of false implication or vendetta-motivated prosecution. He contended that the applicability of Section 17(2) of the CNS Act is to be determined at the time of recording evidence during trial. He further submitted that Section 20 of the CNS Act excludes the application of Section 103 Cr.P.C. Lastly, he prayed that the bail application be dismissed.

5. We have heard learned counsel for both parties and 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 duties, the failure to make video recording of recovery of such a substantial quantity of contraband substance is not only inexplicable but raises serious doubts about the veracity of the prosecution story. The importance of video recording in narcotic cases has been repeatedly emphasized by the superior courts of this country. The ratio decidendi in various judgments has established that video recording serves multiple purposes: (i) it ensures transparency in the recovery proceedings; (ii) it provides independent and irrefutable evidence of the circumstances of recovery; (iii) it protects innocent persons from being falsely implicated; (iv) it safeguards the police officials from false allegations of planting evidence; and (v) it preserves the chain of custody of the recovered material.

7. In the instant case, no explanation whatsoever has been offered by the investigating agency for their failure to conduct video recording despite the fact that the alleged incident occurred at evening time at 05:30 p.m., providing ample time and opportunity for such recording. The prosecution has remained silent on this critical aspect. This omission, in the considered opinion of this Court, is a serious procedural irregularity that materially affects the credibility of the prosecution case.

8. The second cardinal infirmity in the prosecution case pertains to the delay in sending the sample for chemical examination, as well as the failure to establish **safe custody and safe transmission** of the sealed parcel. It is admitted that the FIR was registered on **20.05.2025**, whereas the sample parcel was dispatched vide **memorandum No. 05/25 dated 21.05.2025** through **E/C Sikander Ali**, but was delivered to the Chemical Examiner on **22.05.2025**. Consequently, the parcel did not remain in proven safe custody during the intervening period from **21.05.2025 to 22.05.2025**. The learned Deputy Prosecutor General failed to offer any explanation regarding the safe custody of the sealed sample during the said period, which creates serious doubt about the authenticity and reliability of the chemical report.

9. It is further noteworthy that when the contraband **charas** was received by the Chemical Examiner, its net weight was found to be **5937 grams**, reflecting a shortfall of **63 grams** from the alleged recovered weight of **6000 grams**. This unexplained discrepancy in weight further weakens the prosecution case. Consequently, the matter calls for **further inquiry**, entitling the applicant to the concession of bail.

10. The object and rationale behind this mandatory time limit is to ensure: (i) preservation of the integrity of the sample; (ii) maintenance of unbroken chain of custody; (iii) prevention of tampering or substitution; and (iv) expeditious scientific verification of the nature of the recovered substance.

11. Moreover, when the total quantity is not so huge or unmanageable that its complete transmission to the laboratory was impossible, and yet only an insignificant fraction was sent, an adverse inference must necessarily be drawn against the prosecution. This selective and partial transmission, without any reasonable justification, gives rise to a strong suspicion of manipulation and exaggeration of the quantity.

12. Another serious infirmity in the prosecution case is the complete absence of independent witnesses from the locality. The admitted position is that:

(i) *The alleged incident occurred at 05:30 p.m. in broad daylight*

(ii) *The place of incident is at* Super Highway road Jamshoro, *which is a public thoroughfare and admittedly passengers were sitting in the said Bus.*

(iii) *The area is not described as desolate or uninhabited*

(iv) *Recovery of six kilograms of contraband is claimed to have been made.*

13. Despite these circumstances, no independent witness amongst the passengers of the Bus has been associated with the recovery proceedings. All the witnesses cited by the prosecution are the subordinate staff of the complainant ETNCI Piyaro Khan, namely EC Gulab, EC Allah Bachayo, EC Mudasir Shah and EC Shabir Channa. These witnesses are highly interested witnesses being the subordinates of the complainant and working under his command

and supervision. Section 103 Cr.P.C. mandates that searches shall be made 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 DPG has contended that Section 25 of the CNS Act, 1997 excludes the requirement of associating witnesses from the public in cases relating to narcotics. While it is true that Section 25 provides certain exclusions, the same cannot be invoked arbitrarily and mechanically in every case to justify complete non-compliance with Section 103 Cr.P.C. The prosecution must demonstrate circumstances which made it difficult or impossible to associate independent witnesses. In the instant case, when the recovery was allegedly made in broad daylight on a public road, there is no justification for non-association of independent witnesses. The absence of independent witnesses, when considered along with the other irregularities discussed above, further weakens the prosecution case.

14. Moving ahead, the legislative intent embedded within the SCNS Act, 2024 (as amended in 2025), particularly sections 16, 17, 17(2), 35(1) and 35(2) holds proprietary. This is not a mere procedural formality but a substantive obligation designed to ensure, transparency in police conduct; accountability to law; evidentiary integrity and reliability; prevention of false implications and police abuse and advancement of the rule of law. A watershed amendment to the SCNS Act, introduced in 2025, has fundamentally altered the legal landscape governing bail in narcotics cases. Section 35(1), in its original form, provided an absolute interdiction on bail, stipulating that: *"Notwithstanding anything contained in sections 496 and 497 of the Code, the bail shall not be granted to an accused person charged with an offence under this Act"*. However, Section

35(2) (as amended in 2025) now provides a critical exception, thereby restoring judicial discretion and constitutional safeguards. Section 35(2) provides that *"If it appears to the Special Court or competent court at any stage of the investigation, inquiry or trial, as the case may be, that the accused is arrested under this Act, but there are sufficient grounds for further inquiry into his being guilty, the accused shall, pending such inquiry, be released on bail with sureties..."*. The phrase *"sufficient grounds for further inquiry"* does not require the Court to reach a conclusion that guilt is improbable or that acquittal is likely. Rather, it directs the Court to examine whether the prosecution case, as presently constituted and investigated, exhibits deficiencies or lacunae that necessitate deeper investigation, cross-examination, and trial court scrutiny. Non-compliance with mandatory statutory provisions, such as the video recording requirement under Section 17(2), constitutes a material ground for "further inquiry" because such non-compliance, which undermines the reliability and credibility of the prosecution version; prevents verification of the police account through objective means; raises questions about whether the statutory safeguards were deliberately circumvented and creates a foundation for reasonable doubt regarding the veracity of the alleged recovery.

15. The Honorable Supreme Court of Pakistan in the landmarks judgments of *Zahid Sarfaraz Gill v. The State* [2024 SCMR 934] and *Muhammad Abid Hussain v. The State* [2025 SCMR 721] have collectively establish that procedural fairness, technological evidence collection, and constitutional protections form the foundational pillars upon which narcotics prosecutions must rest, ensuring that neither the innocent are wrongfully convicted nor the guilty escape accountability through shoddy investigation.

16. For the foregoing reasons, we are / were of the considered opinion that the applicant is / was entitled to bail. Accordingly, the bail application in hand is / 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) and P.R. bond in the like amount to the satisfaction of the trial Court vide short order dated 31.12.2025.

17. Needless to mention that the above assessments are tentative nature and shall not affect the merits of the case during trial.

18. Above are the reasons of short order dated 31.12.2025.

JUDGE

JUDGE

Ahmed/Pa,