

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Bail Appln. No. D-133 of 2025

Cr. Bail Appln. No. D-148 of 2025

Before:

Mr. Justice Amjad Ali Bohio, J.

Mr. Justice Jawad Akbar Sarwana, J.

Applicants : Ghulam Akbar @ Ghulamo @ Shamlo son of Bakar Rind and Dhani Bux son of Hussain Bux Deeshak, Through M/s. Muhammad Nawaz Panjhotha and Shah Muhammad Abbasi, Advocates.

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 applicants/accused named above seek post-arrest bail through the above-captioned two separate bail applications, arising out of the same Crime No. 174 of 2025, registered at Police Station Qasimabad, Hyderabad, for offences punishable under Sections 9(i), 9(iii)(c) of the Control of Narcotic Substances Act. Earlier, their bail applications were dismissed by the learned 1st Additional Sessions Judge/Special Judge for CNSA, Hyderabad, vide order dated 18.09.2025.

2. According to the prosecution, the applicants Ghulam Akbar alias Ghulamoo alias Shamloo and Dhani Bux Deshak were apprehended by a police party headed by SIP Bahadur Ali Bhatti on 01.05.2025, at about 2100 hours, near Railway Colony Kachi Abadi, Qasimabad, Hyderabad. Both applicants were allegedly found

carrying black-colored shoppers. From the possession of Ghulam Akbar alias Ghulamoo alias Shamloo, 2056 grams of charas—in four large pieces and one small piece—were recovered, whereas from Dhani Bux Deshak, 2028 grams of charas—in four large pieces and one small piece—were recovered, in the presence of mashirs PC Riaz Ali and PC Ghulam Rasool. Thereafter, the above-mentioned FIR was registered.

3. Learned counsel for the applicants contended that the alleged narcotic substance was falsely foisted upon them with mala fide intention and ulterior motives. He argued that the recovery proceedings were defective due to the non-association of independent private witnesses from the general public. The mashirs cited in the arrest and recovery were police officials and subordinates of the complainant. The deliberate omission to associate independent witnesses raises serious doubt regarding the genuineness, credibility, and truthfulness of the prosecution's version, particularly when the police party had prior information regarding the presence of the applicants and the anticipated recovery of contraband. Furthermore, the quantity of charas recovered from the applicants differed from the quantity recorded by the Chemical Examiner at the time of receiving the sealed parcels. Learned counsel submitted that the case against the applicants requires further inquiry, thereby entitling them to the concession of bail. He argued that the applicants have remained in custody since their arrest and cannot be detained indefinitely, especially when there is no likelihood of the trial commencing in the near future. Since the applicants have already been remanded to judicial custody, they are no longer required for the purposes of further investigation. It was further contended that there is no credible apprehension that the applicants would abscond, tamper

with evidence, or intimidate witnesses. In support of these contentions, learned counsel relied 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, advanced forceful and comprehensive arguments in opposition to the bail applications on behalf of the State. He submitted that the quantities of charas allegedly recovered from the applicants represent a massive and staggering volume, placing the case within the most serious category of narcotic offences. He emphasized that the applicants have failed to substantiate any credible claim of mala fide or enmity on the part of the police officials. Learned DPG further argued that the applicants have 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 applications 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. The main cardinal infirmity in prosecution case pertains to the quantity of contraband charas allegedly recovered on 01.05.2025 being 2028 grams from applicant Dhani Bux and 2056 grams from applicant Ghulam Akber alias Ghulamoo was found as 2022 and 2050 grams respectively from both applicants , thereby, six grams each from the total weight of charas found at the time of recovery from both applicants. Moreover, there was delay of five days in sending the parcel to the chemical examiner beyond the period of 72 hours, therefore, the case against applicants/accused also requires further inquiry as to whether the parcels received by chemical examiner containing same charas which was allegedly recovered from both applicants/accused on aforementioned date and time due to difference in between the weight found on spot and assessed by the chemical examiner. In this regard the learned D.P.G. failed to explain such difference, thereby, the case against the applicant requires further inquiry.

8. 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.

9. 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.

10. 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 2100 hours*
- (ii) *The place of incident is at the street of Kachi Abadi near Railway Colony Qasimabad Hyderabad, which is a public thoroughfare*
- (iii) *The area is not described as desolate or uninhabited*
- (iv) *Recovery of 2056 and 2028 respectively. grams of contraband is claimed to have been made*

11. Despite the police party had prior information, no independent witness from the locality has been associated with the recovery proceedings. All the witnesses cited by the prosecution are the subordinate staff of the complainant SIP Bahadur Bhatti, namely PC Riaz, PC Ghulam Rasool, PC Muhammad Yousuf, PC Shoaib Atta and driver PC Muhammad Rafique. 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 APG 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 at 2100 hours on a public thoroughfare, 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.

12. 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.

13. 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.

14. For the foregoing reasons, we are / were of the considered opinion that the applicants are / were entitled to bail. Accordingly, the bail applications in hand are / were allowed and

the applicants were admitted to bail, subject to furnishing solvent surety in the sum of Rs.100,000/= (Rupees one hundred thousand only) each and P.R. bond in the like amount to the satisfaction of the trial Court vide short order dated 31.12.2025.

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

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



10/12/2025
JUDGE

Ahmed/Pa,