

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2802 of 2024

Applicant : Kashif Ejaz
through Mr. Raja Rashid Ali, Advocate

Respondent : The State
through Mr. Sarfaraz Ali Mangi, Special
Prosecutor ANF.

Date of hearing : 26.03.2025

Date of order : 28.03.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – The applicant, Kashif Ejaz, seeks post-arrest bail in case bearing crime No.67/2024, offence u/s 6/9(1)3(C), 14, and 15 of the CNS Act, 2022, of P.S. ANF Korangi, Karachi. His bail plea was previously declined by the learned Judge of Special Court-I (CNS), Karachi, through an order dated 05.11.2024.

2. According to the prosecution, on 15.09.2024, acting on a spy tip-off, the applicant was intercepted at Drigh Road Railway Station, near Shahrah-e-Faisal, while traveling by train from Peshawar. Upon search, two packets of charas, weighing a total of 2400 grams, were recovered from his black travel bag. Consequently, a case was registered based on these facts.

3. Learned counsel submits, the applicant has been falsely implicated by the police, who allegedly planted charas on him. Despite having prior information, the police did not associate any independent private witnesses from the vicinity of the incident to observe the alleged recovery proceedings. Furthermore, no photographs or video recordings were made during the seizure and arrest, which brings the case within the purview of further inquiry. The case has already been challaned, and the applicant is no longer required by the police for further investigation. Under these circumstances, the learned counsel prays that the applicant be granted

bail. He placed reliance on the case reported as *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934).

4. Conversely, the learned Special Prosecutor for ANF strongly opposes the bail application, arguing that there is no evidence of mala fide intention on the part of the ANF police to suggest that the alleged recovery was fabricated against the applicant.

5. The alleged recovery was reportedly made based on confidential information received through a spy. However, no independent witness was present to observe the recovery. Moreover, the police did not record any video or take photographs of the search, seizure, or arrest, as highlighted by the Hon'ble Supreme Court in the case of *Zahid Sarfaraz Gill* (supra), which was relied upon by the learned counsel for the applicant. The applicant has been in jail since his arrest on 15.09.2024. Section 6/9(3)(C), 14, and 15 of the CNS Act provide for imprisonment ranging from nine to fourteen years for possessing, importing, exporting, or trafficking charas in quantities between 1000 grams and 4999 grams, in violation of Sections 6, 7, and 8 of the Act. The statute explicitly sets one kilogram as the threshold limit. The recovered quantity of narcotic drugs or psychotropic substances exceeds the specified limits outlined in Section 9(c) of the CNSA, which states as follows:

"9(c) death or imprisonment for life, or imprisonment for a term which may extend to fourteen years and shall also be liable to fine which may be up to one million rupees, if the quantity; of narcotic drug psychotropic substance or controlled substance exceeds the limits specified in clause (b). Provided that if quantity exceeds ten kilograms the punishment shall not be less than imprisonment for life."

6. Since the matter involves bail and falls under Section 51 of the CNSA, certain conditions have been laid down to deny bail in cases involving specific offenses. To better explain the position, the relevant section is reproduced as follows:-

"51. No bail is to be granted in respect of certain offenses.---(1) Notwithstanding anything contained in sections 496 and 497 of the Criminal Procedure Code, 1898 (V of 1898), bail shall not be granted to an accused person charged with an offense under this Act or under any other law relating to narcotics where the offense is punishable with death. (2) In the case of other offenses punishable under this

Act, bail shall not be normally granted unless the Court is of the opinion that it is a fit case for the grant of bail and against the security of a substantial amount."

7. The language of the statute indicates whether a provision is mandatory or directory. Upon reviewing the above section, it becomes evident that bail cannot be granted for offenses committed under the CNSA, with the provisions of sections 496 and 497 expressly excluded. However, discretion is afforded to the Court under subsection (2) of Section 51, CNSA, allowing the grant of bail if the Court considers it a "fit case for grant of bail." The phrase "fit case for grant of bail" depends on the specific facts of each case and requires more favorable circumstances for the accused to qualify for the concession of bail.

8. A preliminary review of the police record suggests that it needs to be determined whether the applicant is prima facie involved in the distribution of narcotics in society, whether his case falls under the prohibition contained in Section 51 of the CNSA, and whether there is a possibility that the applicant could be awarded the maximum sentence provided by the recently amended statute. The applicant is no longer required for further investigation. Hence, this case falls within the scope of further inquiry as envisaged under Section 51(2) of the CNS Act.

9. In the present case, the CRO of the applicant is also annexed, which indicates that except for this case, there is no previous record suggesting the applicant's involvement in any similar offense. This fact demonstrates that the applicant is not a habitual offender involved in the spread of narcotics in society. Therefore, the quantum of punishment can only be determined by the trial Court after recording the evidence from both sides. It is a well-established principle of law that every accused is presumed innocent until proven guilty. In these circumstances, the applicant's case, in my humble opinion, clearly falls within the ambit of further inquiry as envisaged by Section 51(2) of the Act, read with Section 497(II), Cr.P.C.

10. In view of the above, the applicant has, prima facie, succeeded in making out a case for further inquiry. Accordingly, he is granted bail in the sum of Rs.500,000/- (Rupees five lac only), subject to furnishing solvent surety and a P.R. bond in the like amount to the satisfaction of the trial Court

11. The above observations are tentative in nature and shall not prejudice the case of either party during the trial.

J U D G E

Shahbaz/PA