

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 751 of 2025

Applicant : Mst. Zainab Wife of Siraj,
Through Mr. Shafkat Gul, Advocate

Respondent : The State
through Mr. Qamaruddin, Asst: P.G. Sindh.

Date of Short order : 05.05.2025

Date of reason : 10.05.2025

REASONS

KHALID HUSSAIN SHAHANI, J. – Through this post-arrest bail application under Section 497 Cr.P.C., the applicant Mst. Zainab seeks her release in FIR No.248 of 2025, registered at Police Station S.S.H.I.A, Karachi, under Sections 6/9(2)/4 of the Control of Narcotic Substances Act, 1997 (as amended) 2022.

2. The allegation against the applicant, as set forth in the FIR, is that she was apprehended along with a co-accused on 15.02.2025 and was found to be in possession of 160 grams of methamphetamine (“ice”), allegedly intended for sale. The prosecution claims that the recovery was effected pursuant to a spy tip-off and that the contraband was seized and sealed at the spot.

3. The learned counsel for the applicant has argued :

- i. the applicant is a woman with no previous criminal record.
- ii. the recovery was effected without associating independent witnesses, in violation of Section 103 Cr.P.C.
- iii. the sample was not drawn at the place of alleged recovery nor was the substance weighed without the packing material, and
- iv. the net weight of the narcotic substance, being 160 grams, attracts the punishment under Section 9(b) or 9(c) as amended, which is up to three years imprisonment, and thus the case does not fall within the prohibitory clause of Section 497(1) Cr.P.C.

4. Conversely, the learned DPG has opposed the grant of bail, contending that the recovery was properly effected, that the applicant was

caught red-handed along with co-accused, and that the substance recovered constitutes a serious offence under the CNS Act.

5. At the outset, it is to be noted that the quantity of the contraband allegedly recovered from the present applicant is 160 grams of methamphetamine (ice). As per the sentencing structure under the Control of Narcotic Substances Act, 1997 (Amended) 2022, the punishment for such quantity falls under Section 9(b) or 9(c) but, in either case, carries lesser punishment, not exceeding three years. It is thus evident that the alleged offence does not fall within the prohibitory clause of Section 497(1) Cr.P.C. and is triable by a Magistrate. The Honourable Apex Courts in number of cases have consistently held that in offences falling outside the ambit of the prohibitory clause of Section 497(1) Cr.P.C., the grant of bail is a rule and its refusal is an exception. The Court is also required to consider whether the accused is a woman, has remained in custody for a considerable period, and whether further incarceration would serve any useful purpose.

6. In the instant case, the applicant is a woman, reportedly having no prior criminal history, and has remained behind bars for over ten months without conclusion of trial. The record reflects that challan has been submitted and the applicant is no more required for investigation purposes. Furthermore, the alleged recovery was made without associating any independent witnesses despite prior information, which casts doubt upon the prosecution case and brings it within the ambit of further inquiry as envisaged under Section 497(2) Cr.P.C.

7. Accordingly, for the foregoing reasons, the applicant was admitted to bail vide short order dated 05.05.2025, subject to furnishing solvent surety in the sum of Rs.100,000/- and PR bond in the like amount to the satisfaction of the learned trial Court and these are the observations of short order.

J U D G E