

ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Bail Application No.S-1006 of 2024

Date	Order with signature of Judge
------	-------------------------------

For hearing of bail application

Mr. Khadim Hussain Rajpar, Advocate for the applicant.
Syed Sardar Ali Shah, Additional P.G for the State.

Date of Hearing and Order: - 24th February, 2025

ORDER

RIAZAT ALI SAHAR, J :- Through this bail application filed under Section 497 of the Code of Criminal Procedure, the applicant, Zulfiqar Ali, seeks post-arrest bail in Crime No. 69 of 2024, registered at Police Station Lakha Road, for an offence punishable under Section 9-C of the Control of Narcotic Substances Act, 1997. His earlier bail plea was rejected by the learned trial Court vide order dated 26.11.2024.

2. According to the FIR registered by the complainant, ASI Sultan Ahmed Chang, on 10.11.2024, the present applicant was apprehended by the police at Sikandar Phatak Link Road, Bhiria Road, while the police were on routine patrol. Upon search, a plastic bag (*shopper*) was recovered from the applicant's possession, containing 1,400 grams of *charas*, out of which 200 grams were separated for chemical analysis. Subsequently, after completing all requisite legal formalities at the spot, the accused, along with the recovered *charas*, was brought to the police station, where the aforementioned FIR was registered.

3. It is *inter alia* contended by the learned counsel for the applicant that the applicant is innocent and has been falsely implicated in the present case. It is submitted that the alleged recovery took place on a link road, yet no independent private person has been cited as a *mashir*, which constitutes a clear violation of Section 103 Cr.P.C., thereby rendering the case highly doubtful. The learned counsel further argues that the mere registration of criminal cases against the applicant does not constitute a valid ground for the refusal of bail, particularly when no conviction or sentence has been awarded in any

of the cases, which, according to the applicant, have been registered due to enmity. In view of the foregoing, he prays for the grant of bail to the applicant. In support of his contentions, reliance has been placed on the case reported as *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934).

4. The learned Additional Prosecutor General (APG) has opposed the bail application on the ground that the applicant is involved in a narcotics-related offence and, therefore, is not entitled to the concession of post-arrest bail. Accordingly, he has prayed for the dismissal of the bail application.

5. I have heard the learned counsel for the parties and have meticulously examined the material available on record. Upon careful consideration of the arguments advanced and a thorough scrutiny of the record, it is evident that, while the alleged recovery of 1,400 grammes of *charas* is not in dispute, the police failed to make any attempt to associate independent persons as witnesses to the recovery. It is pertinent to mention that since the promulgation of the Sindh Control of Narcotic Substances Act, 2024, it has become imperative for police officers to register cases strictly in accordance with the provisions of the said Act, and for the courts to adjudicate such matters under the newly enacted law governing narcotics-related offences. It is a well-settled principle of law that police officials are competent witnesses, akin to any other witnesses; however, where circumstances permit, it is equally incumbent upon them to make all reasonable efforts to associate independent witnesses. In cases where such efforts prove unsuccessful, the police are duty-bound to provide a cogent and plausible explanation for the absence of independent witnesses. Failure to do so raises serious concerns regarding the transparency and credibility of the prosecution's case. With regard to the applicant's alleged involvement in 14 criminal cases, the learned counsel for the applicant has submitted a statement asserting that all such cases have been registered due to enmity. Significantly, the record reflects that the applicant has not been convicted or sentenced in any of these cases, necessitating a cautious approach in assessing the prosecution's claims.

6. Moreover, the accusation against the applicant pertains to his alleged possession of **1,400 grammes of Charas**. *Prima facie*, this matter falls within the domain of the **trial Court** for adjudication. Notably, the Honourable **Supreme Court**, in the case of *Zahid Sarfaraz Gill* (supra), has categorically held that where law enforcement agencies **fail to record or photograph the search, seizure, or arrest of an accused**—despite the law permitting the use of modern devices and techniques—the credibility of the prosecution’s case is materially undermined. In the present case, the police have **failed to adhere to the test prescribed by the Supreme Court**, as there is no record of any video or photographic evidence of the alleged search, seizure, or arrest. This omission not only reflects **non-compliance with legal directives** but also raises doubts regarding the procedural integrity of the case. Therefore, in all **narcotics-related cases**, it is imperative that law enforcement authorities **strictly comply with the requirement of employing modern recording devices** to ensure transparency, as mandated by the **ratio decidendi** of the Supreme Court’s judgment in *Zahid Sarfaraz Gill*.

7. Moreover, Section 17(2) of the Sindh Control of Narcotic Substances Act, 2024, explicitly mandates that the video recording of all raids, seizures, inspections, and arrests shall be conducted by the officer in charge of such operations. Given that the accused was apprehended pursuant to spy information, it was incumbent upon the police to document the entire operation, including the arrest and the alleged recovery of *charas*, through video recording. The failure to comply with this statutory requirement not only constitutes a serious lapse in procedure but also undermines the evidentiary integrity of the prosecution’s case. Non-compliance with such a mandatory provision vitiates the credibility of the alleged recovery and casts doubt on the prosecution’s version. Furthermore, in light of the binding precedent set by the Honourable Supreme Court in *Zahid Sarfaraz Gill* (supra), it is imperative that all future narcotics-related cases strictly adhere to the statutory requirement of employing modern recording devices. This ensures transparency,

safeguards the rights of the accused, and upholds the principles of due process and fair trial.

Section 17(2) SCNS Act 2024 is reproduced as under:

17(2) The video recording of all raids, seizures, inspections and arrests shall be made by the officer in-charge of such operations.

8. In view of the foregoing, *prima facie*, the applicant has succeeded in making out a case for **further inquiry**, as contemplated under **Sub-Section (2) of Section 497 of the Code of Criminal Procedure (Cr.P.C.)**. Consequently, the instant **Criminal Bail Application** is **allowed**, and the applicant is **admitted to post-arrest bail**, subject to his furnishing **bail bonds in the sum of Rs. 200,000/- (Two Lacs)** with **one surety in the like amount** to the satisfaction of the learned **trial Court**.

9. Before parting, it needs not to make clarification that the observations recorded above are tentative in nature, therefore, the trial Court shall not be influenced in any manner whatsoever.

JUDGE

AHMAD