

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Criminal Bail application No.S-993 of 2025

Applicant : Ali Mardan @ Sajjad Shah through Mr. Waqar Ali Laghari, advocate.

Respondent : The State, through Mr. Irfan Ali Talpur, Deputy Prosecutor General, Sindh.

Date of hearing : **19.09.2025**
Date of order : **19.09.2025**

ORDER

TASNEEM SULTANA, J.- Through this bail application, the applicant Ali Mardan @ Sajjad Shah seeks post arrest bail in Crime No.49 of 2025, under Sections 9 (i) 3 (C) The Sindh Control Of Narcotic Substances Act, 2024 (SCNSA), registered at PS Matiari, after his post arrest bail application was declined by the learned Sessions Judge/Special Judge CNS, Matiari, vide order dated 26.08.2025.

2. It is alleged that on 17.05.2025 police party of PS Matiari headed by ASI Abdul Hakeem Kalhoro apprehended the applicant/accused Ali Mardan @ Sajjad Shah near Dargah Abbas Pir, City Matiari, on being found in possession of 1300 grams Charas containing in a black polythene bag under memo of arrest & recovery prepared in presence of PC Kareemullah and PC Fawad; for that he was booked in the aforementioned FIR.

3. Learned counsel for the applicant contended that the applicant/accused is innocent and has been falsely implicated by the complainant; that the alleged place of arrest and recovery is a thickly populated area, yet no private person was associated to witness the alleged proceedings; that the applicant is a victim of police enmity, as the police acted at the behest of one Khalil Jat, who, under the guise of a journalist, used to blackmail the applicant; that the applicant had earlier filed a Criminal Miscellaneous application against the police of CIA and Khalil Jat, therefore his false implication cannot be ruled out; that the applicant/accused has no criminal record, hence foisting of narcotics upon him on account of police enmity is evident; that all proceedings, including arrest, search, preparation of memo, weighing, sealing, and registration of FIR, were completed within about two and a half hours, whereas the distance between the place of incident and the police station is about two kilometers. This

circumstance suggests that the proceedings were actually conducted at the police station, creating a serious dent in the prosecution case; that except for the version of the police, there is no independent material to connect the applicant/accused with the commission of the alleged offence; that the complainant relied solely on his subordinate staff and failed to associate private witnesses, which weakens the prosecution case. In support of his contentions he has relied upon 2009 MLD 1151 (*Abdul Wahid versus The State*) and 2009 MLD 856 (*Ghulam Ali versus The State*).

4. Conversely learned DPG opposed the instant bail application and contended that applicant/accused is nominated in FIR and huge quantity of narcotic substance has been recovered from his exclusive possession; that the offence falls within the ambit of prohibitory clause of S.497 (1) Cr.PC. No malafide on the part of police for false implication of applicant/ accused has been established. The FIR has been registered promptly and property has been dispatched to the laboratory for analysis within time.

5. Heard and record perused.

6. It reflects from the record that the applicant/accused was apprehended at the spot and 1300 grams Charas was recovered from his possession. The alleged offence falls under Section 9(1) (3) (c) of the SCNSA, which is punishable with imprisonment that may extend to 14 years but shall not be less than 9 years, along with a fine up to five hundred thousand rupees, but not less than one hundred thousand rupees. According to the recent judgment in *Barkat Ullah versus The State and another, CrI. Misc. No. 431-B/2024* it is held by Larger Bench of Islamabad High Court that:-

"(a) The expression "punishable" used in section 497(1) Cr.P.C. refers to the maximum punishment provided for an offence. Thus if an offence is punishable by ten years or more, then subject to other legal grounds, the same would attract statutory prohibition contained in section 497(1) Cr. P.C. and

(b) It is held that if provision of the Act of 1997 provides for maximum punishment of ten years and more, it shall attract the prohibitory clause of section 497(1), Cr.P.C. The applicability of the term "borderline case" developed in the context of erstwhile provisions of the Act of 1997 i.e. section 9(c), would amount to anticipating possible period of conviction at bail stage, which exercise is not permissible while making tentative assessment of a criminal case."

7. The said offence, therefore, falls within the ambit of prohibitory clause of Section 497 CrPC read with bar contained in Section 35 of SCNSA. Therefore, there is prima face sufficient material on the record to believe involvement of the applicant/accused in the alleged offence which falls within the prohibitory clause.

8. In view of above facts and circumstances, the applicant/accused failed to make out a case for grant of bail. Consequently, his bail application was dismissed vide my short order dated 19.09.2025 and these are the reasons in support thereof.

9. The observation made hereinabove are tentative in nature shall not prejudice the case of either party at the trial.

J U D G E

Irfan Ali