

## IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Before:

*Mr. Justice Amjad Ali Bohio, J.*

*Mr. Justice Khalid Hussain Shahani, J.*

### **Cr. Bail Appln. No.D-102 of 2025**

Applicant : Mukhtiar Ahmed s/o Noor Ahmed, Rind  
Through Mr. Israr Ahmed Shah, Advocate

### **Cr. Bail Appln. No.D-136 of 2025**

Applicant : Nasrullah s/o Saeed Khan, Pathan  
Through Mr. Israr Ahmed Shah, Advocate

The State : Through Mr. Muhammad Farooque Ali Jatoi,  
Special Prosecutor for ANF

Date of hearing : 03.12.2025

Date of order : 23.12.2025

## **ORDER**

**KHALID HUSSAIN SHAHANI, J.** Through these connected bail applications under Section 497 Cr.P.C, the applicants Mukhtiar Ahmed S/o Noor Ahmed and Nasrullah Khan S/o Saeed Khan seek post-arrest bail in Crime No.14/2025 registered at Police Station ANF, Sukkur under Sections 6, 9 (1) 3(e), 14, and 15 of the Control of Narcotic Substances Act, 1997. Both applicants have been in judicial custody since 03.03.2025, and their earlier bail applications were dismissed by the learned Trial Court. Notice was issued to the State, and arguments have been heard from both sides.

2. The prosecution case, as emanating from the FIR lodged by Sub-Inspector Abdul Rasheed on 03.03.2025, is that acting upon information received through a spy informer regarding the transportation of narcotics by the applicants on two Honda motorcycles bearing registration numbers AQV-7957 and AUG-8331, a raiding party was constituted. At approximately 1530 hours, the raiding party reached near Sada Bahar Hotel, Shikarpur Road, Sukkur, where both applicants were allegedly found standing on separate motorcycles with black shoulder bags. According to the prosecution, upon apprehension and in the presence of police officials acting as mashirs (PC Asif Channa and PC

Arjun Das), applicant Mukhtiar Ahmed allegedly handed over 8 packets of charas wrapped in yellow isolation tape, while applicant Nasrullah Khan allegedly handed over 7 packets. The total recovery was stated to be 18 kilograms of charas. The packets were numbered 1 to 15, and samples of 10 grams each were allegedly separated from each packet, sealed in white cloth parcels bearing the seal of PS ANF Sukkur, and sent for chemical examination. The remaining contraband was sealed separately. Both applicants were arrested, and the case property, including two motorcycles, cash amounts, and mobile phones, was taken into custody.

3. Learned counsel for applicant Mukhtiar Ahmed, contended that both applicants have been falsely implicated due to a matrimonial dispute. It was stated that one Mst. Shahzadi contracted a free-will marriage with Imran Ali, the nephew of applicant Mukhtiar Ahmed. The parents of Mst. Shahzadi, being influential persons with political backing, threatened the applicant's family with dire consequences. Thereafter, one Wadero Imtiaz Ali Rind, in connivance with Sobedar Ajmal Rind of ANF, succeeded in getting the present FIR registered. This background demonstrates malafide intent and ulterior motives, bringing the case squarely within the ambit of further inquiry.

4. Learned counsel submitted a glaring and fatal discrepancy exists between the forwarding letter addressed to the Chemical Examiner and the contents of the FIR. According to the forwarding letter dated 04.03.2025, signed by Sub-Inspector Abdul Rasheed himself, the police sent "01 x Parcel sample of white cloth bag. Parcel No.1 of white cloth bag having 10 *khaki* envelopes. Sr. No 1 To 15". However, the FIR explicitly reveals that 15 separate packets were recovered and numbered from 1 to 15, and samples were drawn from all 15 packets. This fundamental contradiction stating 10 envelopes while referencing serial numbers 1 to 15 casts serious aspersions on the safe custody, proper sealing, and chain of custody of the case property. Learned counsel submitted that this discrepancy is not a minor clerical error but goes to the root of the

prosecution case. It raises grave doubts about whether the property was properly secured and sealed, whether the correct samples reached the Chemical Examiner, and whether tampering occurred. Learned counsel further submitted that despite the alleged recovery taking place at a busy public location Sada Bahar Hotel on Shikarpur Road, Sukkur in broad daylight, the prosecution failed to make any video recording or photographic evidence of the recovery proceedings. Learned counsel contended that although the FIR alleges that the recovery was made at a highly busy and thickly populated public place, no independent private person was associated as a witness or mashir. The FIR merely states that "locals refused" to act as mashirs, which is an implausible explanation given the nature and location of the alleged incident. While acknowledging that Section 25 of the CNSA excludes the application of Section 103 Cr.P.C, learned counsel submitted that the spirit and intent of Section 103 to ensure transparency and prevent false implication remains relevant. All prosecution witnesses are police officials and subordinates of the complainant, rendering their testimony self-serving and requiring independent corroboration, which is entirely absent. It was further argued that Sub-Inspector Abdul Rasheed is both the complainant and the investigating officer in this case. It was emphasized that applicant Mukhtiar Ahmed has no previous involvement in any narcotics case or any other criminal matter, which is a relevant consideration for the grant of bail.

5. Learned counsel for applicant Nasrullah Khan adopted similar arguments and further emphasized that the alleged motorcycle does not belong to his client and was foisted upon him. He also highlighted that the Malkhana Incharge's statement under Section 161 Cr.P.C. contains no proper details regarding the alleged recovery, particularly the quantity deposited and withdrawn, further undermining the safe custody of the case property.

6. Both learned counsel prayed that the applicants may be admitted to post-arrest bail, as the prosecution case is riddled with doubt and requires further inquiry.

7. Learned Special Prosecutor for ANF vehemently opposed the bail applications and contended that a huge quantity of 18 kilograms of charas was recovered from the joint possession of both applicants in the presence of mashirs. The chemical examiner's report is positive, confirming the recovered substance to be charas. The offence falls within the prohibitory clause of Section 497 Cr.P.C., and therefore, the applicants are not entitled to bail. Learned SPP argued that the recovery was made pursuant to credible intelligence, and the raiding party acted in accordance with law. The non-association of private mashirs is not fatal, as Section 25 of the CNSA excludes the application of Section 103 Cr.P.C and official witnesses are legally competent. He submitted that the discrepancy pointed out by the defence is minor and does not go to the root of the matter. He further argued that the applicants were caught red-handed and have failed to demonstrate any enmity or ill-will on the part of the police. The allegations of false implication are mere afterthoughts designed to create doubt. The applicants pose a threat to society and should not be released on bail. Learned SPP relied on the quantity of narcotics and submitted that given the gravity of the offence and the severe punishment prescribed, the bail applications should be dismissed.

8. This Court has carefully considered the arguments advanced by learned counsel for both sides, perused the contents of the bail applications, the documents annexed thereto, the police file, the chemical examiner's report, the forwarding letter, the FIR, and the relevant statutory provisions and case law.

9. At the outset, it is essential to delineate the scope and ambit of inquiry at the bail stage. Bail matters are not mini-trials where the merits of the case are exhaustively examined. The Court's function is limited to a tentative assessment of whether there exist reasonable grounds to believe that the accused

has committed the offence, or whether there are sufficient grounds for further inquiry into the guilt of the accused. The Honourable Supreme Court of Pakistan has repeatedly emphasized that bail is the rule and jail is the exception, and the accused is entitled to bail as a matter of right when the case falls within the parameters of Section 497(2) Cr.P.C.

10. The most glaring and insurmountable infirmity in the prosecution case is the material contradiction between the forwarding letter sent to the Chemical Examiner and the facts narrated in the FIR. The forwarding letter, dated 04-03-2025, unequivocally states that Parcel No. 1 contained “10 khaki envelopes. S No 1 To 15”. This statement is internally inconsistent and factually irreconcilable with the prosecution’s own version in the FIR, which narrates that 15 packets were recovered, numbered 1 to 15, and samples were drawn from each packet. This is not a typographical error or minor clerical mistake that can be brushed aside. It is a fundamental discrepancy that strikes at the heart of the prosecution case and raises serious questions about:

- (a) Whether the property was properly secured and sealed at the spot;*
- (b) Whether the correct samples reached the Chemical Examiner;*
- (c) Whether tampering occurred during transit or storage;*
- (d) Whether the chain of custody remained unbroken and secure.*

11. The law on this point is well-settled by the Honourable Supreme Court of Pakistan. In *Khair-ul-Bashar v. State* (2019 SCMR 930), the apex court categorically held that re-testing of drugs in case of deficient reports amounts to giving a premium to the prosecution for its mistakes and lapses. Moreover, there is a likelihood that the chain of custody was compromised. Any such deficiency or discrepancy renders the Chemical Examiner's report unreliable and incapable of sustaining conviction. Similarly, in *The State v. Imam Bux* (2018 SCMR 2039), the Honourable Supreme Court emphasized that the prosecution must establish that the chain of custody was unbroken, unsuspicious, safe, and secure. Any break in the chain of custody—whether in

safe custody or safe transmission—impairs and vitiates the conclusiveness and reliability of the Chemical Examiner's report, rendering it incapable of sustaining conviction.

12. In *Zahir Shah v. The State* (2019 SCMR 2004), the Supreme Court reiterated that safe custody and safe transmission of the drug from the spot of recovery until its receipt by the Narcotics Testing Laboratory must be satisfactorily established. This chain of custody is fundamental, as the report of the Government Analyst is the main evidence for conviction. Any break in this chain renders the report unreliable.

13. In the present case, the discrepancy is not explained anywhere in the record. The forwarding letter is an official document prepared by the complainant/IO himself, and its contents directly contradict the FIR. This alone is sufficient to bring the case within the ambit of "further inquiry" as contemplated under Section 497(2) Cr.P.C.

14. The second critical and determinative infirmity is the complete absence of any video recording or photographic evidence of the recovery proceedings. The alleged recovery took place at Sada Bahar Hotel, Shikarpur Road, Sukkur a busy public place at approximately 1530 hours, i.e in broad daylight. Despite the availability of modern technology, including mobile phones with cameras, which are routinely carried by police officers, no effort whatsoever was made to record the recovery proceedings. The Honourable Supreme Court of Pakistan, in the landmark and binding precedent of *Muhammad Abid Hussain v. The State* (2025 SCMR 721), has categorically and unequivocally held that the use of video recording and photography during narcotics recovery proceedings is not merely a procedural formality but a mandatory substantive requirement. The Court emphasized that:

(a) *The Control of Narcotic Substances Act prescribes severe punishments for possession and sale of narcotic substances, and given the gravity of penalties, the standard of proof required to establish guilt must be correspondingly high;*

- (b) *Article 164 of the Qanun-e-Shahadat Order, 1984, permits the use of evidence obtained through modern devices, and such digital evidence is no longer optional but necessary to maintain fairness, prevent false implication, and ensure transparency;*
- (c) *Article 165 of the Qanun-e-Shahadat Order overrides all other laws, making Article 164 mandatory;*
- (d) *Where police neither associate independent witnesses nor secure digital proof, the prosecution's case becomes doubtful if it rests solely on statements of the raiding officers;*
- (e) *Wrongful incarceration of an innocent person cannot be compensated, and strict legal compliance and reliable evidence are essential before depriving a citizen of liberty in narcotics cases.*

15. This principle has been further reinforced in *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934), wherein the Supreme Court observed that if police and ANF were to use their mobile phone cameras to record and photograph the search, seizure, and arrest, it would be useful evidence to establish the presence of the accused at the crime scene, the possession by the accused of narcotic substances, and the search and seizure. It would also prevent false allegations being levelled against ANF/police that the narcotic substance was foisted upon them for ulterior motives. In the present case, the prosecution has offered no plausible explanation for the failure to make video recording despite the availability of technology and the public nature of the location. This omission is fatal to the prosecution's case at the bail stage and raises a strong inference that the recovery may not have occurred in the manner alleged, or that there is a possibility of foisting contraband upon the applicants.

16. The third significant infirmity concerns the non-association of any private person as mashir or witness to the recovery proceedings. The FIR merely states that "*some persons were asked to act as mashir but they refused*". This explanation is inherently implausible and unacceptable, given that the alleged recovery took place at a highly busy location Sada Bahar Hotel on Shikarpur Road, during daytime. It defies common sense and reason that in such a crowded public place, not a single private citizen could be found willing to witness the proceedings. While it is true that Section 25 of the Control of

Narcotic Substances Act, 1997, excludes the application of Section 103 Cr.P.C in narcotics cases, the spirit, intent, and purpose underlying Section 103 to ensure transparency, fairness, and prevention of false implication remain highly relevant and cannot be completely disregarded. The Honourable Supreme Court and various High Courts have repeatedly emphasized that where recovery is made in a public place and the police have advance information (as admitted in this case through spy information), the failure to associate independent witnesses creates serious doubt about the genuineness of the recovery. In the present case, all prosecution witnesses are police officials, and they are subordinates of the complainant/investigating officer. Their evidence is inherently interested and self-serving. The Honourable Supreme Court in *Muhammad Arshad v. The State* (2022 SCMR 1555) has held that where the prosecution's case hinges entirely on police testimony uncorroborated by natural witnesses, the benefit of doubt is to be extended at the bail stage.

17. It is an admitted fact that Sub-Inspector Abdul Rasheed is both the complainant and the investigating officer in this case. While there is no absolute legal bar on this practice, the courts have consistently held that such evidence is inherently weak and requires independent corroboration. In *Nazir Ahmed v. The State* (PLD 2009 Karachi 191), the Sindh High Court observed that when the complainant is also the investigating officer, it cannot be expected that he will collect any material which goes against the prosecution or gives any benefit to the accused. Such evidence is a weak piece of evidence, and for sustaining a conviction, it would require independent corroboration. In the present case, no independent corroboration exists. The entire case rests on the testimony of police officials who are subordinates of the complainant/IO.

18. The learned counsel for the applicants has rightly pointed out that the statement of the Malkhana Incharge under Section 161 Cr.P.C is vague and does not contain proper details regarding the quantity of contraband deposited and withdrawn. This further undermines the safe custody and safe transmission



of the case property. The law on this point is crystal clear. In *Ikramullah & Others v. The State* (2015 SCMR 1002), the Honourable Supreme Court held that the chain of custody or safe custody and safe transmission of narcotics begins with seizure of the narcotic by the law enforcement officer, followed by separation of representative samples, storage with the law enforcement agency, and dispatch to the Chemical Examiner. This chain of custody must be safe and secure. Any break or gap in the chain makes the report of the Chemical Examiner fail to justify conviction. The prosecution must establish that the chain of custody has remained unbroken, safe, secure, and indisputable. In the present case, the evidence regarding safe custody and safe transmission is incomplete, vague, and unsatisfactory.

19. While allegations of false implication due to personal enmity must be substantiated, the applicants have placed on record photostat copies of nikahnama, affidavit, and court orders showing the matrimonial relationship and disputes between the families. These documents lend credence to the defence plea that the applicants may have been falsely implicated. At the bail stage, the Court cannot conclusively determine the veracity of these allegations, but they do raise sufficient doubt to bring the case within the ambit of further inquiry. It is an undisputed fact that applicant Mukhtiar Ahmed has no previous involvement in any narcotics case or any other criminal matter. This is a relevant consideration for the grant of bail, as it indicates that the applicant does not pose a habitual threat to society.

20. The legal position regarding the grant of bail in cases requiring further inquiry is well-established. Section 497(2) Cr.P.C. provides:

*"If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail..."*

21. The expression "further inquiry" has been elaborately interpreted by the superior courts. Where the prosecution case suffers from material contradictions, procedural irregularities, absence of independent witnesses, or other infirmities that cast doubt on the veracity of the allegations, the accused is entitled to bail pending trial.

In *Tariq Pervez v. The State* (1995 SCMR 1345), the Honourable Supreme Court held that if there is any doubt about the guilt of the accused, he will be entitled to such benefit not as a matter of grace and concession, but as a matter of right. When the infirmities and irregularities in the present case are viewed cumulatively rather than in isolation, they collectively establish that this is a classic case requiring further inquiry.

22. In view of the foregoing discussion, this Court is of the considered opinion that there exist sufficient grounds for further inquiry into the guilt of the applicants. For the reasons stated above, these bail applications are allowed. The applicants Mukhtiar Ahmed and Nasrullah Khan are admitted to post-arrest bail subject to their furnishing bail bonds in the sum of Rs.500,000/- (Rupees Five Hundred Thousand Only) each with two reliable and resourceful sureties each in the like amount to the satisfaction of the Trial Court. The office is directed to send a copy of this order to the learned Trial Court.

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