

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. D-97 of 2025

Before:

Mr. Justice Amjad Ali Bohio, J.

Mr. Justice Khalid Hussain Shahani, J.

Applicants : 1. Allah Dino son of Raheem Bux, Brohi
2. Mumtaz Ali son of Hidayatullah, Brohi
Through Mr. Parvez Ahmed Kubar, Advocate

The State : Through Syed Sardar Ali Shah, Addl. P.G.

Date of Hearing : 05.11.2025
Date of Order : 12.11.2025

ORDER

KHALID HUSSAIN SHAHANI, J.— This post-arrest bail application has been filed under Section 497 Cr.P.C on behalf of the applicants/accused seeking grant of bail in Crime No.252/2024, for offence under Section 9-C of the Control of Narcotic Substances Act (Amended) 2022, registered at Police Station Gambat. Previously bail of accused was dismissed, hence the applicant prefer this bail application before this Court.

2. The prosecution theory are that on 26.12.2024, during routine patrolling at 1700 hours near Dhukar Shaakh Road ASI Mumtaz Ali Ujjan and his subordinates intercepted two persons carrying shopping bags. The accused, identified as Allah Dino and Mumtaz Ali, allegedly attempted to flee upon sighting police. They were apprehended along with their bags. The first accused's bag contained *charas* pieces weighing 4000 grams, and the second accused's bag contained *charas* pieces weighing 3700 grams. During interrogation, the accused disclosed they had purchased the *charas* from Hazoor Bux Solangi and were waiting to deliver it to Shamsuddin Rajpar. Cash amounting to Rs.100 and Rs.50 were recovered from the respective accused. FIR No.252/2024 was subsequently registered at 1700 hours under Section 9-C CNSA.

3. Mr. Kubar, learned counsel for the applicants/accused mainly contended that the applicants/accused are innocent persons having no previous

criminal record and have been falsely implicated in this case with malafide intention; that there is inordinate and unexplained delay in submission of the final report under Section 173 Cr.P.C, which was filed after 32 days from the date of registration of FIR, whereas the prescribed period is 14 days, this delay is indicative of malafide on the part of the investigating agency; that the samples of the allegedly recovered charas were sent to the Chemical Examiner's Laboratory on 06.01.2025, i.e 11 days after the registration of FIR dated 26.12.2024, whereas as per the mandatory provisions of Section 9-C CNS Act read with Government Analyzer Rules 2001, the samples ought to have been sent to the laboratory within 72 hours, this violation is fatal to the prosecution case; that on careful perusal of the Chemical Examiner's Report (Annexure-D), it is revealed that the Chemical Examiner has specifically observed that "*old and hard pieces of charas*" were received for examination, this observation is of cardinal importance as it creates serious doubt regarding the genuineness of the recovery and suggests that the alleged substance may have been recovered on some earlier date or may have been foisted upon the applicants/accused; that the alleged recovery is of 4000 grams from the first accused and 3700 grams from the second accused, making a total quantity of 7700 grams. However, astonishingly, only 60 grams from the first shopping bag and 50 grams from the second shopping bag, totaling merely 110 grams, were sent to the Chemical Examiner's Laboratory for analysis. This constitutes a minuscule fraction (less than 1.5%) of the total alleged recovery. When the total quantity was not of such huge magnitude that it could not be sent in entirety or in substantial proportion for chemical analysis, the selective and partial transmission of such a small sample raises serious questions about the authenticity of the remaining quantity and the bona fides of the prosecution case; that the applicants/accused can only be held responsible for the quantity of *charas* that was actually sent to and analyzed by the Chemical Examiner's Laboratory, i.e 110 grams, and not for the entire alleged quantity of 7700 grams, as the remaining quantity has not been subjected to scientific

examination and verification; that despite the fact that the alleged incident occurred in broad daylight at 1700 hours in a populated area on a public link road, no independent witness from the locality has been associated with the investigation or cited as a witness. All the witnesses are subordinates of the complainant, rendering them highly interested witnesses. This is a clear violation of the mandatory provisions of Section 103 Cr.P.C; that most significantly, there is complete absence of video recording of the alleged recovery proceedings. In the contemporary era where audio-visual recording devices are readily available and accessible, and in light of the guidelines issued by superior courts emphasizing the necessity of video recording in cases involving recovery of contraband substances to ensure transparency and to obviate the possibility of manipulation, the failure to conduct video recording of the recovery proceedings is a serious lacuna that casts a shadow on the credibility of the prosecution story; That the case of the applicants/accused is one of further inquiry, as held by superior courts in numerous precedents. Grant of bail does not amount to acquittal and the innocence or guilt of the applicants/accused shall be determined during the trial; that the applicants/accused are in judicial custody since their arrest and are no longer required for further investigation as the case has been challan-ed. Their continued detention serves no useful purpose to the prosecution. In support of his arguments, learned counsel has placed reliance on (PLD 2021 SC 795), (2024 SCMR 934), (2025 SCMR 721) and an unreported order in Cr. Petition No.150-K/2024.

4. Learned Additional Prosecutor General, Syed Sardar Ali Shah, appearing for the State, has opposed the bail application on the following grounds that a substantial quantity of narcotic substance, namely 7700 grams of *charas*, has been allegedly recovered from the conscious possession of the applicants/accused, which is a serious offence falling under the prohibitory clause; that the chemical examination report has confirmed the recovered substance to be *charas*, thereby establishing the nature of the contraband; that the

applicants/accused have made confessional statements disclosing the names of their supplier (Hazoor Bux Solangi) and intended recipient (Shamsuddin Rajpar), which corroborates their involvement in the drug trafficking network; that there is no ill-will or enmity alleged against the police officials, and therefore, there is no reason for the police to falsely implicate the applicants/accused by foisting such a huge quantity of narcotic substance upon them; that the offence is not only serious in nature but is also against society at large, and therefore, the applicants/accused do not deserve any leniency. That regarding the violation of Section 103 Cr.P.C, Section 25 of the CNS Act, 1997 excludes the requirement of associating witnesses from the public in cases relating to narcotics. That all the prosecution witnesses have fully implicated the applicants/accused in their respective statements recorded under Section 161 Cr.P.C, and the case requires deeper appreciation of evidence which is not permissible at the bail stage.

5. We have heard learned counsel for both sides at considerable length, have perused the material available on record including the FIR, chemical examination report, statements of witnesses recorded under Section 161 Cr.P.C, and the impugned order of the learned trial court dated 09.09.2025. We have also examined the case law cited by learned counsel for the applicants/accused. The following salient features emerge from the record which merit detailed consideration:

6. One of the most significant lacunae in the present case is the complete absence of video recording of the alleged recovery proceedings. In the modern age of technology where mobile phones equipped with video recording facilities are ubiquitously available and are routinely carried by police officials during their duties, the failure to make video recording of recovery of such a substantial quantity of contraband substance is not only inexplicable but raises serious doubts about the veracity of the prosecution story. The importance of video recording in narcotic cases has been repeatedly emphasized by the superior courts of this country. The ratio decidendi in various judgments has

established that video recording serves multiple purposes: (i) it ensures transparency in the recovery proceedings; (ii) it provides independent and irrefutable evidence of the circumstances of recovery; (iii) it protects innocent persons from being falsely implicated; (iv) it safeguards the police officials from false allegations of planting evidence; and (v) it preserves the chain of custody of the recovered material.

7. In the instant case, no explanation whatsoever has been offered by the investigating agency for their failure to conduct video recording despite the fact that the alleged incident occurred in broad daylight at 1700 hours, providing ample time and opportunity for such recording. The prosecution has remained silent on this critical aspect. This omission, in the considered opinion of this Court, is a serious procedural irregularity that materially affects the credibility of the prosecution case.

8. The second cardinal infirmity in the prosecution case pertains to the delay in sending the samples for chemical examination. The undisputed facts on record reveal that:

- FIR was registered on 26.12.2024 at 1700 hours
- Samples were sent to the Chemical Examiner's Laboratory on 06.01.2025
- This constitutes a delay of 11 days from the date of registration of FIR

9. Section 9-C of the Control of Narcotic Substances Act (Amended) 2022, read with the Government Analyzer Rules 2001, mandates that samples of the recovered narcotic substance must be sent to the Chemical Examiner's Laboratory within 72 hours (three days) of the recovery. The object and rationale behind this mandatory time limit is to ensure: (i) preservation of the integrity of the sample; (ii) maintenance of unbroken chain of custody; (iii) prevention of tampering or substitution; and (iv) expeditious scientific verification of the nature of the recovered substance. In the present case, the samples were sent after a lapse of 11 days, which is more than three times the prescribed period. No plausible explanation has been furnished by the prosecution for this inordinate delay. The

investigating officer has not placed on record any circumstances which prevented compliance with the statutory time limit. This unexplained delay is not a mere procedural irregularity but goes to the root of the matter and creates serious doubt about the authenticity and integrity of the samples sent for examination. The delay assumes greater significance when considered in conjunction with the observations recorded in the Chemical Examiner's Report regarding the condition of the samples received, which shall be discussed in the succeeding paragraphs. Perhaps the most damaging feature of the prosecution case emerges from the Chemical Examiner's Report itself (Annexure-D). Upon careful scrutiny of the said report, it is observed that the Chemical Examiner has specifically recorded that the samples received for examination consisted of "*old and hard pieces of charas*". This observation is of immense significance and cannot be glossed over. If the alleged recovery was effected on 26.12.2024 as claimed by the prosecution, and the samples were sent within 11 days thereafter, there is no rational explanation as to why the pieces would be described as "old and hard" by the Chemical Examiner. Fresh charas does not ordinarily acquire the characteristics of being old and hard within a period of 11 days or even a few weeks.

10. Another glaring irregularity that has been forcefully highlighted by learned counsel for the applicants/accused pertains to the quantity of the narcotic substance sent for chemical examination vis-à-vis the total quantity allegedly recovered. The admitted facts are:

- Total quantity allegedly recovered from first accused: 4000 grams
- Total quantity allegedly recovered from second accused: 3700 grams
- Aggregate quantity allegedly recovered: 7700 grams (7.7 kilograms)
- Quantity sent for chemical examination from first accused: 60 grams
- Quantity sent for chemical examination from second accused: 50 grams
- Total quantity sent for examination: 110 grams

11. Elementary mathematics reveals that only 110 grams out of 7700 grams, constituting a mere 1.43% of the total alleged recovery, was sent for

scientific analysis. Put differently, 98.57% of the allegedly recovered substance was not subjected to any chemical examination whatsoever. This Court has given anxious consideration to this aspect and finds it deeply troubling. The prosecution has failed to offer any cogent explanation as to why only such a minuscule portion of the allegedly recovered substance was sent for examination. It is not the prosecution case that the quantity involved was so massive or voluminous that it was physically impossible or impracticable to send the entire quantity or at least a substantial representative sample for chemical analysis. The total quantity of 7.7 kilograms is neither unusually large nor unmanageable. There was absolutely no impediment, whether logistical, technical, or otherwise, in sending the entire quantity or a much larger representative sample to the Chemical Examiner's Laboratory. The selective transmission of only 110 grams gives rise to several disturbing questions:

- (i) What is the evidentiary value and probative worth of the remaining 7590 grams (98.57% of the alleged recovery) which has not been scientifically examined and verified?
- (ii) How can the prosecution establish, beyond reasonable doubt, that the remaining quantity consists of the same contraband substance?
- (iii) What prevented the investigating agency from sending a larger and more representative sample?
- (iv) Was the partial transmission a deliberate strategy to ensure that only a small quantity could be scientifically proven, while exaggerating the total quantity in the FIR to make the case appear more serious?

12. It is a settled principle of criminal jurisprudence that the prosecution must prove its case beyond reasonable doubt. In narcotic cases, chemical examination by a qualified expert is the primary and most crucial piece of evidence to establish the nature of the recovered substance. When the bulk of the allegedly recovered material has not been subjected to any scientific examination, serious doubt arises as to whether the entire quantity consisted of narcotic substance or whether only a small portion was genuine while the rest was added to inflate the quantity. In the considered view of this Court, the applicants cannot be held responsible or made liable for the entire quantity of 7700 grams when only 110 grams thereof has been scientifically verified to be charas. The principle

that an accused person can only be convicted on the basis of legally admissible evidence is the foundation of our criminal justice system. The remaining 7590 grams, in the absence of scientific verification, lacks the evidentiary value necessary to establish its character as contraband substance.

13. Moreover, when the total quantity is not so huge or unmanageable that its complete transmission to the laboratory was impossible, and yet only an insignificant fraction was sent, an adverse inference must necessarily be drawn against the prosecution. This selective and partial transmission, without any reasonable justification, gives rise to a strong suspicion of manipulation and exaggeration of the quantity.

14. Another serious infirmity in the prosecution case is the complete absence of independent witnesses from the locality. The admitted position is that:

- (i) The alleged incident occurred at 1700 hours in broad daylight*
- (ii) The place of incident is a link road connecting Dhukar Shaakh to Jhando Shaakh Road, which is a public thoroughfare*
- (iii) The area is not described as desolate or uninhabited*
- (iv) Recovery of 7.7 kilograms of contraband is claimed to have been made*

15. Despite these circumstances, no independent witness from the locality has been associated with the recovery proceedings. All the witnesses cited by the prosecution are the subordinate staff of the complainant ASI Mumtaz Ali Ujjan, namely HC Imdad Hussain Khaskheli and PC Riaz Hussain Wassan. These witnesses are highly interested witnesses being the subordinates of the complainant and working under his command and supervision. Section 103 Cr.P.C. mandates that searches shall be made in the presence of two or more respectable inhabitants of the locality in which the place to be searched is situated. The object of this provision is to ensure transparency and to provide independent corroboration to the prosecution story. The learned APG has contended that Section 25 of the CNS Act, 1997 excludes the requirement of associating witnesses from the public in cases relating to narcotics. While it is

true that Section 25 provides certain exclusions, the same cannot be invoked arbitrarily and mechanically in every case to justify complete non-compliance with Section 103 Cr.P.C. The prosecution must demonstrate circumstances which made it difficult or impossible to associate independent witnesses. In the instant case, when the recovery was allegedly made in broad daylight on a public road, there is no justification for non-association of independent witnesses. The absence of independent witnesses, when considered along with the other irregularities discussed above, further weakens the prosecution case.

16. In view of the foregoing discussion and analysis, we are satisfied that this is a fit case for grant of bail to the applicants/accused. Consequently, the instant Criminal Bail Application No. S-97 of 2025 is allowed and the applicants/accused namely (1) Allah Dino S/o Raheem Bux Brohi and (2) Mumtaz Ali S/o Hidayatullah Brohi are admitted to post-arrest bail subject to their furnishing solvent sureties in the sum of Rs.500,000/- (Rupees Five Hundred Thousand only) each and personal bonds in the like amount to the satisfaction of the learned trial court. The observations are tentative in nature and shall not prejudice the case of either party at trial.

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