

IN THE HIGH COURT OF SINDH CIRCUIT COURT AT HYDERABAD

Criminal Bail Application No.S-1091 of 2025

Applicant : Nasrullah alias Shakarullah son of
Rehmatullah Brohi, through Mr.
Shabeer Hussain Memon, Advocate

Respondent : The State through Ms. Sana Memon,
Assistant Prosecutor General, Sindh

Date of Hearing : 25.09.2025

Date of Order : 25.09.2025

ORDER

Jan Ali Junejo, J.- The applicant, Nasarullah alias Shakarullah, seeks post-arrest bail under Section 497, Cr.P.C. in Crime No.341 of 2025, registered at Police Station Kotri, District Jamshoro, for offences punishable under Sections 9(2) & 9(3) of the Sindh Control of Narcotic Substances Act, 2024. The applicant's earlier plea for bail was declined by the learned Additional Sessions Judge-I, Kotri vide order dated 23.08.2025. Hence, the present bail application before this Court.

2. Briefly, the prosecution story as set out in the FIR is that on 21.07.2025 at 0130 hours, complainant ASI-Sikandar Ali Panhwer, Incharge Police Post Khanpur, Kotri, registered the present FIR alleging that during routine patrolling on the preceding night along with his subordinates, they apprehended one person moving suspiciously near the Railway Crossing Bridge, Station Road, Kotri. Upon search, the person disclosed his name as Nasarullah alias Shakarullah S/o. Rehmatullah Brohi. From his right pocket, a white substance identified as "Ice" weighing 65 grams and Rs.450/- in cash were allegedly recovered. Since no private persons were available, HC Ayaz Ali Khaskheli and PC Waseem Ahmed were cited as mashirs. The recovered substance was sealed for chemical examination, and FIR was subsequently registered under Sections 9(2)-3 of the Sindh CNS Act, 2024.

3. Learned counsel for the applicant, Mr. Shabeer Hussain Memon, argues that the applicant is innocent and has been falsely implicated due to enmity with the local police. He contends that the alleged recovery of 65 grams of "Ice" constitutes a small quantity and not a commercial one;

therefore, the offence does not fall within the prohibitory clause of Section 497(1), Cr.P.C. He submits that the maximum punishment prescribed for such quantity is up to three years, thereby attracting the principle of further inquiry within the meaning of Section 497(2), Cr.P.C. He further argues that no private or independent witness was associated with the alleged recovery proceedings, despite the incident taking place at a public place, which casts serious doubt on the veracity of the prosecution case. He points out that both the F.I.R. and the mashirnama are silent regarding the source, destination, or intended purchaser of the alleged narcotic, thereby weakening the prosecution's story. Learned counsel emphasizes that the applicant has remained in custody since his arrest; the investigation has been completed, the challan has been submitted, and the trial is not likely to conclude in the near future. He asserts that there is no likelihood of the applicant absconding, tampering with the prosecution evidence, or indulging in a similar offence. Hence, he prays that the applicant be admitted to post-arrest bail.

4. Conversely, the learned A.P.G., Ms. Sana Memon, assisted by the Investigating Officer, vehemently opposes the grant of bail. She argues that the recovery of "Ice," a hazardous and prohibited substance, from the possession of the applicant is sufficient to connect him with the commission of the offence. She contends that the applicant has failed to establish any mala fide or enmity against the police, rendering the plea of false implication devoid of substance. However, upon a specific query from the Court, the learned A.P.G. was unable to offer a satisfactory explanation as to why, despite the recovery being of a small quantity, the case should not be treated as one of further inquiry. Lastly, she prays for dismissal of the bail application.

5. I have carefully considered the respective submissions advanced by the learned counsel for the parties and examined the material available on record with due circumspection. The tentative assessment of the record reveals that the alleged recovery of 65 grams of "Ice" (methamphetamine) squarely falls within the definition of *small quantity* as contemplated under the Sindh Control of Narcotic Substances Act, 2024. Consequently, the case does not fall within the ambit of the *prohibitory clause* of Section 497(1), Cr.P.C. The Hon'ble Supreme Court of Pakistan, in the celebrated case of **Tariq Bashir v. The State (PLD 1995 SC 34)**, enunciated the foundational principle that in offences not falling within the prohibitory clause, the grant of bail is a rule and its refusal an exception. This principle was subsequently reaffirmed in **Muhammad Tanveer v. The State (PLD 2017 SC 733)**, wherein it was held that mere involvement in a

non-prohibitory offence, without likelihood of absconding or tampering with the prosecution evidence, ordinarily entitles the accused to the concession of bail. Most recently, the Hon'ble Supreme Court in **Muhammad Amjad Naeem v. The State through Prosecutor General Punjab and another (2025 SCMR 1130)** has once again reiterated that: *"There is also another important legal aspect of this case, namely, that bail was refused vide the impugned judgment, notwithstanding the fact that the offence of criminal breach of trust punishable under section 406 P.P.C does not fall within the prohibitory clause of section 497(1) Cr.P.C. This refusal becomes questionable when examined in light of the settled principle of law, namely, that in cases involving commission of non-bailable offences not falling within the prohibitory clause of 497(1) Cr.P.C, bail is granted as a rule and refusal is an exception"*. In the present case, no such exceptional circumstance has been demonstrated. The investigation has been completed, challan has been submitted, and all witnesses are police officials, hence there is no apprehension of tampering with evidence. The applicant has no previous criminal record, and no material has been produced to suggest that he is likely to misuse the concession of bail.

6. Furthermore, the absence of any independent mashir in the recovery proceedings, despite the alleged incident having taken place at a public place, and without any plausible explanation from the prosecution, materially undermines the authenticity of the recovery at this tentative stage. It is a well-settled principle of criminal jurisprudence that while police officials are competent witnesses, their testimony in cases involving recovery of narcotic substances requires careful scrutiny when not supported by independent corroboration. The non-association of private witnesses in such circumstances, though not by itself fatal, does create a dent in the prosecution's case and renders the matter one calling for judicial caution. Additionally, the small quantity of the recovered substance, when considered together with the absence of independent corroboration, and the lack of any evidence suggesting that the applicant is a habitual offender or has previous criminal antecedents, brings the case squarely within the ambit of *further inquiry* as contemplated under Section 497(2), Cr.P.C. The record reflects that the applicant has remained in custody since 21.07.2025, while the trial has not yet effectively commenced. The investigation stands concluded, the challan has already been submitted and the offence with which the Applicant is charged does not fall within the prohibitory clause of Section 497(2) Cr.P.C. In such circumstances, the continued detention of the applicant would serve no fruitful purpose, particularly when his presence during trial can be secured through adequate surety.

7. In view of the foregoing discussion, and the guiding principles enunciated by the Honourable Supreme Court, the applicant Nasarullah alias Shakarullah has succeeded in making out a case for the concession of post-arrest bail, which is accordingly allowed. The applicant is admitted to post-arrest bail subject to furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand only) and a P.R. bond in the like amount to the satisfaction of the learned trial Court.

8. Before parting, it is clarified that the observations made herein are purely tentative and confined to the disposal of this bail application. They shall not, in any manner, prejudice or influence the learned trial Court while adjudicating the case on its merits. These are the detailed reasons for the short order announced on 25.09.2025.

JUDGE