

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. D-163 of 2025

Before:

Mr. Justice Amjad Ali Bohio, J.

Mr. Justice Khalid Hussain Shahani, J.

Applicant : Darvesh Khan son of Raheem Dad Khan
Through Mr. Ghulam Murtaza Korai, Advocate

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

Date of hearing : 14.01.2026

Date of Short order : 14.01.2026

Reasons recorded on : 16.01.2026

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicant Darvesh Khan Yousifzai, seeks post-arrest bail in a case bearing crime No.14/2025, for offence under section 9-C of the Sindh Control of Narcotics Substances Act 2024, registered at Police Station Baberlo. Previously, bail of applicant was declined by the court of learned Additional Sessions Judge-I/ (MCTC) Khairpur vide order dated 14.10.2025.

2. According to the FIR, on 01.02.2025 police intercepted a taxi bearing No.APD-141 near Bagh Minor, allegedly recovering four packets of charas (4000 grams) from the boot, separating 100 grams from each packet as samples, and arresting the applicant-driver on the spot under section 9(c) of the Sindh Control of Narcotics Substances Act.

3. Learned counsel for the applicant mainly contended, the alleged recovery is not from the person of the applicant but from the boot of a commercial taxi, hence exclusive and conscious possession is not established; that only police mashirs, being subordinates of the complainant, were associated; that there exists a material conflict between the FIR, which mentions four packets and four samples, and the chemical examiner's report, which refers to eight pieces; and that no video or photographic record of the recovery proceedings was prepared despite clear statutory and judicial mandates, so that the case falls within the ambit of further inquiry under section 497(2) Cr.P.C.

4. Learned Addl. P.G, on the other hand, opposes bail on the grounds that a substantial quantity of charas is shown as recovered from the applicant named in the FIR, that the chemical report is positive, that the offence falls within the prohibitory clause, that section 25 of the CNSA excludes section 103 Cr.P.C, and that the matter requires deeper appreciation of evidence which is not permissible at the bail stage.

5. While narcotics offences are serious and carry severe punishments; bail cannot be declined solely on the ground of gravity where the available material creates reasonable doubt about the accused's involvement and calls for further inquiry within the meaning of section 497(2) Cr.P.C. The first significant infirmity is the contradiction between the prosecution version in the FIR and the scientific evidence. The FIR speaks of four packets of charas with four 100-gram samples, yet the chemical examiner acknowledges receipt and examination of eight pieces, a discrepancy that is neither minor nor clerical but goes to the very root of the alleged recovery and the integrity of the case property. This unexplained inconsistency raises a legitimate doubt whether the same substance allegedly recovered from the applicant was sent for analysis, or whether substitution or tampering took place, a question that must be resolved at trial and, at this stage, clearly attracts the rule of further inquiry; this view is supported by precedent where contradiction between the quantity described in the FIR and in other documents was treated as a ground for grant of bail in *Muhammad Yousif Jatoi v. The State* (2025 MLD 128).

6. The next critical deficiency is the admitted absence of any video recording or photographic documentation of the alleged recovery, despite its occurrence in broad daylight at a public place and despite the settled requirement that such proceedings be recorded through modern devices. In *Muhammad Abid Hussain v. The State* (2025 SCMR 721), the Supreme Court has held in categorical terms that, given the severe punishments under the CNSA, photography and videography of recovery proceedings in narcotics

cases are not optional but mandatory, and that failure to do so renders the prosecution version highly suspect. Similarly, in *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934), the Court, relying on Article 164 of the *Qanun-e-Shahadat* Order, 1984, emphasized the duty of law-enforcement agencies to employ modern devices such as video and photo recording in searches and seizures and issued directions to concerned authorities to ensure compliance. Section 17(2) of the Sindh Control of Narcotic Substances Act, 2024 further makes video recording of all raids, seizures, inspections and arrests mandatory, not discretionary, and in the present case this statutory command as well as the Supreme Court's pronouncements have been ignored without any explanation, thereby seriously undermining the credibility of the alleged recovery and independently bringing the case within the domain of further inquiry.

7. Another aspect which favors the applicant is the nature and location of the alleged recovery. The contraband is stated to have been recovered from the boot or rear portion of a taxi used for commercial hire and not from the person of the applicant or from a specially constructed cavity under his exclusive control. In the milieu of a public taxi carrying passengers and their luggage, mere recovery from the vehicle does not by itself conclusively establish that the driver had conscious knowledge of, or control over, the narcotics; the possibility that the contraband was placed by a passenger without the driver's knowledge cannot, at this tentative stage, be ruled out. Although in cases where narcotics are recovered from open view or secret cavities the courts have inferred knowledge on the part of the person in charge of the vehicle, as discussed in *Muhammad Noman Munir v. The State* (2020 SCMR 1257), each case turns on its own facts, and here the prosecution has not produced any material to show that the applicant either placed the substance in the boot or knew of its presence, a consideration strengthened by the admitted position that he is a first-time offender with no prior narcotics record.

8. The non-association of any independent or neutral witness from the locality is yet another factor creating doubt. The *mashirnama* was prepared only in the presence of police constables subordinate to the complainant, even though the alleged recovery took place during daytime at a public place near Bagh Minor where the presence of ordinary passers-by could reasonably be expected. While section 25 of Act ibid relaxes the strict requirement of section 103 Cr.P.C, the underlying spirit of associating public witnesses to ensure transparency remains relevant, and where the entire case hinges on closely connected police witnesses and no credible effort to procure natural witnesses is demonstrated, the evidence becomes self-serving and must be scrutinized with caution. In *Muhammad Arshad v. The State* (2022 SCMR 1555), such uncorroborated police testimony was held to justify extension of benefit of doubt at the bail stage.

9. Equally important is the question of chain of custody and safe transmission of the case property. In *Jeehand v. The State* (2025 SCMR 923), the Supreme Court has reiterated that safe custody and safe transmission of narcotics and their representative samples must be established through an unbroken, well-documented chain beginning from seizure, sampling, storage and dispatch up to receipt in the testing laboratory, supported by Register No.XIX, road certificates under Rules 22.70 and 22.72 of the Police Rules, 1934, and other contemporaneous documents, and that mere oral assertions by police officials are insufficient. In the present case, there is nothing on record to show that the prosecution has, or can, establish such a secure chain of custody by producing the requisite documentary evidence, and the already-noted discrepancy between the number of packets mentioned in the FIR and the number of pieces examined by the chemical examiner further aggravates the doubt whether the same case property reached the laboratory without substitution or tampering, a matter that plainly falls within the compass of further inquiry.

10. It is also material that the applicant is a first-time offender with no previous criminal history, the investigation has concluded, challan has been submitted, and he is not required for further investigation. In view of the likely delay in conclusion of the trial, keeping the applicant incarcerated despite the presence of multiple doubts and infirmities would amount to inflicting pre-trial punishment, contrary to the settled principle that bail is a rule and jail an exception, particularly where section 497(2) Cr.P.C is attracted and the constitutional guarantees of life, liberty and fair trial under Articles 9 and 10-A of the Constitution require that a citizen's liberty not be curtailed except for strong, clear and compelling reasons, which are absent in this case.

11. For these cumulative reasons, the case against the applicant manifestly falls within the purview of "further inquiry" as envisaged by section 497(2) Cr.P.C, entitling him to the concession of bail notwithstanding the prohibitory clause. The application was accordingly allowed and the applicant, Darvesh Khan was admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.100,000/- and a P.R bond in the like amount to the satisfaction of the trial court, with the clear understanding that any misuse of the concession of bail, attempt to abscond, or effort to tamper with the prosecution evidence or influence witnesses shall entail cancellation of bail vide short order dated 14.01.2026. These are the detailed reasons thereof. However; the observations made herein are tentative, confined to the decision of this bail application, and shall not prejudice the trial court, which shall decide the case strictly on the evidence produced before it in accordance with law.

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