

IN THE HIGH COURT OF SINDH, KARACHI

Cr. Misc. Application No.246 of 2024

Cr. Misc. Application No.482 of 2024

Cr. Misc. Application No.484 of 2024

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Khalid Hussain Shahani

Applicant:- The State/Anti-Narcotics Force through
Mr. Musharraf Azhar, Special Prosecutor, ANF.

Respondents:- Jamil Khan and two others through
Mr. Nasir Hussain, advocate.

Date of hearing:- 18.09.2026

O R D E R

=====

MUHAMMAD IQBAL KALHORO J: Respondents were arrested from Dargah Hashim Shah Ghazi, Korangi, Shah Faisal Road, Karachi on 10.03.2023 while travelling in a vigo car from which 264 Kg of Charas was recovered. Hence they were booked in this case

2. Respondent Jamil Khan then filed a bail application before the trial Court on the ground that he was not present at the spot. In support of his plea of alibi, he filed affidavits of his brother Sanaullah and a friend and gave CDR record. The trial Court considered these affidavits and CDR and granted him bail vide order dated 02.11.2023. Thereafter, respondent Asmatullah filed a bail application which was granted by the trial Court on the rule of consistency vide order dated 01.03.2024. Lastly, respondent Izzatullah was granted bail by the trial Court on medical ground on the report of Chief Medical Officer, District Prison, Malir vide order dated 01.03.2024.

3. Learned counsel for ANF has argued that all these applications have been filed u/s 497(5) CrPC for cancellation of bail to respondents on the ground that applicant Jamil Khan although was arrested from the

spot but on account of a suspicious affidavits and CDR that he was present at somewhere else, he was granted bail without looking into the facts of the case. Then, strangely respondent Asmatullah was granted bail by the trial Court on the rule of consistency, although respondent Jamil Khan was granted bail on the plea of alibi. Lastly, respondent Izzatullah was granted bail on medical ground but without any medical board's report that his detention in jail was detrimental to his life or that his treatment in the jail was not available.

4. Learned counsel for respondent has chosen to remain absent. He is reportedly busy before Federal Shariat Court of Pakistan. However, his associate has appeared, he submits that the bail to the respondents has been rightly granted.

5. We have considered submissions of the parties and perused material available on record. Admittedly, this is a case where huge recovery of narcotics viz. 264 Kg of Charas was effected from the vehicle found in possession of the respondents at the time of such recovery. Accused Jamil Khan was arrested from the spot in presence of mashirs, while travelling in the said vehicle. To support such facts, prosecution *prima facie* had not only evidence of witnesses u/s 161 CrPC but also a memo of arrest and recovery. Yet, learned trial Judge strangely believed affidavits, not supported by any evidence, and dubious CDR that was never verified that he was not present at the spot. Although, it is settled that defence of alibi cannot be considered at the bail stage, not the least when the accused is shown to be arrested from the spot, but the trial Court proceeded to believe the same and granted bail to the respondents in total negation of the prosecution case.

6. The bail granting order of respondent Asmatullah is stranger than the first one as on the rule of consistency respondent Jamil Khan was granted bail which ground was apparently not attracted in the case of this respondent. He had not taken such plea yet he was considered

entitled to bail on this ground. Respondent Izzatullah was granted bail on medical ground without any report of medical board stating that the treatment of his ailment was not available in the jail or that his detention was detrimental to his life, a settled proposition that the trial Court opted to overlook entirely.

7. In the cases of narcotics it is settled that the Courts are to have a dynamic approach as these offences are considered to be the offences against the society. In such a serious case, the casual approach of the learned Judge, evident from absence of any reference to the relevant facts, in deciding right of the respondents to bail, not only reflects adversely on her approach, but also has caused miscarriage of justice. None of the ground was available to the respondents, but the trial Court proceeded to presume them and granted bail to the respondents on the basis of such presumption. We, therefore, set aside the impugned orders, recall the bail granted to the respondents. As a result, the trial Court is directed to issue NBWs against them and procure their attendance for the trial and decide the same on merits in accordance with law.

The Cr. Misc. Applications are accordingly disposed of

JUDGE

JUDGE

HANIF