HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Present:
Mr. Justice Amjad Ali Bohio
Mr. Justice Jawad Akbar Sarwana

Crl. Bail Application No.D-202 of 2025

Applicant	:	Sadiq S/o Aitebar Gul Through Mr. Muhammad Hussain Khan Advocate
Respondent	:	The State Through Mr. Shahryar Shar, Special Prosecutor ANF
Date of hearing & Short Order	:	**31.12.2025**
Date of reasons	:	**04.11.2026**

O R D E R

JAWAD AKBAR SARWANA, J: Through the captioned bail application, the applicant/accused Sadiq S/o Aitebar Gul seeks post-arrest bail in Crime No.26 of 2025, registered at Police Station ANF, Hyderabad, for the offences U/Ss 6, 9 (1) and 3-(c) of the Control of Narcotic Substances (Amendment) Act, 2022 **("CNS Amendment Act, 2022")**. Earlier, his first bail application viz. Special Case No.326 of 2025 was declined by the learned Model Criminal Trial Court-I/Ist Additional Sessions Judge/Special Judge CNC, Hyderabad, vide order dated 20.10.2025.

2. I have heard the learned counsel for the applicant/accused and the learned Special Prosecutor ANF and have perused the record, and my observations are as herein below.

3. The background of the matter is set out in the FIR which for the sake of brevity is not reproduced and may be read into this paragraph ad seriatim.

4. Concisely the facts of the prosecution case as per FIR are that on 28.05.2025 a police party of P.S. ANF Hyderabad headed by Inspector Syed Salman along with PC Zafarullah and PC Zulfiqar on spy information reached the place pointed out by the informer and apprehended the applicant/accused on 28.05.2025 at 1530 hours. A black shopper was found in possession of the applicant/accused,

containing charas weighing a total of 3600 grams. Due to the absence of private witnesses, police officials were appointed as mashirs, and samples were taken separately after weighing each packet using an electronic scale, with 10/10 grams of charas, and sealed in five transparent bags with SS seals and tagged as parcel No. R-1.

5. The learned counsel for applicant/accused states that no video recording of such recovery was made during such incident and even a memorandum of recovery, FIR and challan have no reference with regard to recording of such video during incident and, therefore, the principal laid down in the case of "*Muhammad Abid Hussain vs the State and another*" (2025 SCMR 721), "*Zahid Sarfaraz Gill vs the State*" (2024 SCMR 934) were violated and the applicant/accused is entitled for the concession of post-arrest bail. He further submitted that the entire case property was not sent for chemical analysis, except a 10-gram piece of sample, and there is no official description of the remaining case property. He next contended that the applicant/accused was arrested on 28.05.2025 and, since then, the case has not proceeded, and he is facing incarceration without any fruitful development in the case. He urged that no independent witness was arranged at the time of alleged recovery of the narcotic, thereby Section 103 was violated; that challan has been submitted before the Trial Court and the applicant/accused is no more required for investigation and there is no apprehension that the applicant/accused is attempting to temper or destroy the prosecution's evidence. Further, no CRO is available against the applicant/accused.

6. On the other hand, the learned Special Prosecutor ANF opposed the bail application on the grounds that the applicant/accused was nominated in the FIR with a specific role and was arrested on the spot in possession of narcotics; therefore, at this stage he is not entitled to the concession of bail. He further contended that the principles laid down in the cases relied upon by the counsel for the applicant/accused do not establish that the applicant/accused is entitled to bail solely due to the absence of video recording. He argued that samples were extracted in compliance with Rules 3 and 4 of the CNS (Government Analyst) Rules, 2001. The offence carries a punishment ranging from 9 to 14 years and, in such circumstances, only the maximum statutory punishment should be considered; while the lesser punishment may fall under the non-prohibitory clause, the maximum punishment brings the case within the prohibitory clause.

7. We have heard the learned counsel for the parties and perused the record.

8. It is an undisputed fact that the prosecution failed to produce any video recording of the personal search, seizure, or recovery of the alleged contraband, nor was such recording referenced in the Memorandum of Recovery prepared at the crime scene by the raiding ANF/Police Officer. This omission stands in direct conflict with the judicial standards articulated by the Hon'ble Supreme Court in the precedents cited by the applicants' counsel, particularly "*Zahid Sarfraz Gill*" (supra) and "*Muhammad Abid*" (supra). Both cases underscore the necessity of adhering to modern evidentiary practices to ensure transparency and credibility. Such deficiency of photography and videography causes further inquiry in narcotics proceedings. While we agree with the learned Special Prosecutor that, per the dictum of the Hon'ble Supreme Court, the maximum punishment should be considered at the bail stage, the prohibitory clause does not operate as an absolute bar. Bail may still be granted based on well-recognised principles, such as the existence of reasonable grounds for further inquiry, the presence of mala fides, or where the evidence suffers from glaring infirmities or statutory violations. Besides, DPG conceded, as per CRO, that the applicant is not involved in any criminal cases except the present one.

9. There is another aspect to the matter, concerning the chain of safe custody of the contraband, i.e. although the challan identifies the maalkhana in-charge to be ASI Ayaz Ahmed, who was handed over the custody of the contraband by Syed Salman, Inspector/IO, Police Station ANF Hyderabad. It appears the maalkhana in-charge did not release the contraband items to the concerned courier who transported the same to the chemical examiner; instead, as per the challan, they were routed again through Syed Salman, Inspector/IO, who handed them over to the courier, PC Ameer Ali. This is inconsistent with the chemical examiner's report, which mentions that the samples received by the Chemical Expert were obtained from Syed Salman, Inspector/IO (but as mentioned above, he is not the maalkhana in-charge), and were delivered by PC Imtiaz Ali, not PC Ameer Ali. Therefore, there is a disconnect between the Challan and the Chemical Examiner's Report as to the identity of the person who delivered the contraband for examination to the chemical examiner as well as the IOs involvement in the chain of safe custody.

10. The applicant has remained in custody for the past seven (7) months. It is a well-established "golden principle" of criminal justice that while the conviction of a guilty person may ultimately remedy an erroneous grant of

bail, no adequate reparation can ever be afforded to an innocent individual for unjustified incarceration, even if acquittal is eventually secured. This principle, first enunciated in "Manzoor v. The State" (1972 PLD SC 81), has been consistently upheld by the Hon'ble Supreme Court.

11. In light of the facts and circumstances and jurisprudence discussed above, the applicant is/was accordingly extended the concession of post-arrest bail in the sum of Rs. 100,000/-, with a P.R. bond in the like amount, to the satisfaction of the learned trial Court, vide short order dated 31.12.2025. Thereby this Bail Application was allowed and the applicant/accused Sadiq S/o Aitebar Gul was admitted to post-arrest bail in Crime No.26 of 2025, registered at Police Station ANF, Hyderabad, for the offences U/Ss 6, 9 (1) and 3-(c) of the CNS Act, 1997, subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Lac Only) and P.R. bond in the like amount to the satisfaction of the learned trial Court.

12. Needless to observe that any findings recorded hereinabove are tentative in nature for the purpose of deciding this bail application, and the trial Court will not be influenced by it and will try the case in accordance with law.

13. The above are the reasons for our short order dated 31.12.2025.

JUDGE

JUDGE

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