HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

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

Crl. Bail Application No.D-110 of 2025

Applicant	:	Owais Waqar S/o Waqar Muhammad Through Mr. Ishrat Ali Lohar 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 Owais Waqar S/o Waqar Muhammad seeks post-arrest bail in Crime No.27 of 2024, registered at Police Station ANF, Hyderabad, for the offences U/Ss 6, 9 (1) and 3-(D) of the Control of Narcotic Substances (Amendment) Act, 2022 **("CNS Amendment Act, 2022")**. Earlier, his first bail application viz. Crl. Bail Application No.31 of 2025 was declined by the learned Sessions/Special Judge (CNSA), Hyderabad, vide order dated 29.01.2025.

2. We 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 the FIR are that on 05.07.2024 a police party of P.S. ANF Hyderabad headed by Inspector/SHO Daud Munawar on spy information reached the place pointed out by the informer and apprehended the applicant/accused on 05.07.2024 at 1230 hours. A black shopping bag was found in the

possession of the applicant/accused, containing charas weighing a total of 5000 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; 10/10 grams of charas were sealed in five transparent bags, with steel and identification Nos. S-1 to S-5 written on them.

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), and "*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 sample, and that there is no official description of the remaining case property. He next contended that the applicant/accused was arrested on 05.07.2024 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 the 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 that no CRO is available against the applicant/accused and that in fact the entire incident has been manufactured on the behest of one Muhammad Saleem son of Muhammad Shamim Ansari against whom the applicant/accused has inter se several civil proceedings including, *inter alia*, F.C. Suit No.368 of 2015 before the VIIth Senior Civil Judge, Hyderabad, and as a counterblast, Muhammad Saleem had instituted Summary Execution Application No.16/2021 (Summary Suit No.124 of 2019) before the VIIIth Additional Sessions Judge, Hyderabad. It is alleged that Muhammad Saleem's cousin is an officer with ANF Sukkur, and that the FIR is false and fabricated, and the contraband is allegedly foisted by the ANF.

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 directly conflicts 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 need to adhere to modern evidentiary practices to ensure transparency and credibility. Such deficiency of photography and videography caused for 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 also another aspect to the matter concerning the chain of safe custody of the contraband, as per the FIR, malkhana register, chemical examiner's report and the challan, etc. First, as per the FIR, the same was registered on 05.07.2024, and there is an unexplained delay of three (3) days for the submission of the sample to the chemical examiner, who prepared his/her report almost three days after the samples had been recovered, as the FIR was lodged on 05.07.2024 at 1230 hours and the samples were received by the chemical examiner on 08.07.2024. Secondly, the chemical report itself is dated 08.08.2024, which is more than one month after receipt of the samples. Thirdly, the FIR states that samples of 10/10 grams of charas

were taken out separately and sealed in 5 bags with seals and identification Nos. S1 to S5. The total weight was five (5) kg of charas. However, the chemical report indicates that the samples were 12 grams in five packets, with a total weight of 60 grams, and the Form-I description of 50 grams gross weight is inconsistent with the laboratory's gross weight of 60 grams. Read together, the aforementioned circumstances call for further inquiry at this bail stage.

10. The applicant/accused has remained in custody for almost eighteen (18) 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 above facts and circumstances and jurisprudence, the applicant was 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. This Bail Application was allowed and the applicant/accused Owais Waqar S/o Waqar Muhammad was admitted to post-arrest bail in Crime No.27 of 2024, registered at Police Station ANF, Hyderabad, for the offences U/Ss 6, 9 (1) and 3-(D) of the CNS Amendment Act, 2022, 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 the short order dated 31.12.2025.

JUDGE

JUDGE

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