

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Bail Application No.D-103 of 2026

Present:

Justice Muhammad Faisal Kamal Alam
Justice Tasneem Sultana

Applicant : Muhammad Sohail Pathan through Mr. Mujeeb-ur-Rehman Malano, Advocate.

Respondent : The State through Mr. Muhammad Raza Katohar, Deputy PG for the State.

Date of Hearing : 09-09-2026
Date of Order : 16-09-2026

ORDER

TASNEEM SULTANA, J.- Through this criminal bail application, the applicant, Muhammad Sohail Pathan, seeks post-arrest bail in Crime No.05 of 2026, registered under Section 9(1)(3)(e) of the Sindh Control of Narcotic Substances Act, 2024, at Police Station, Baberloi-Khairpur, after his application for the same relief was declined by the learned Sessions Judge/Special Judge (CNSA), Khairpur, vide order dated 07.04.2026.

2. The detailed facts of the case are already set out in the bail application and the FIR and, therefore, need not be reproduced here.

3. Learned counsel for the applicant contended that the applicant is innocent and has falsely been implicated in the present case; that he had hired the car and was travelling therein as a passenger, whereas co-accused Danish Khan was driving the vehicle; that the alleged contraband was not recovered from the person of the applicant but was concealed inside a gas cylinder installed in the rear portion of the car, which had to be cut open with a cutter; that the applicant had no knowledge of the contraband concealed therein; that only an amount of Rs.1,000/- was recovered from his person; and that he has no previous criminal record. He, therefore, submitted that the matter calls for further inquiry and prays for grant of post-arrest bail.

4. Conversely, learned Deputy Prosecutor General for the State opposed the bail application and contended that the applicant was apprehended at the spot along with co-accused Danish Khan from the

vehicle in which 30 kilograms of Charas was recovered; that the recovered substance was sent to the Chemical Examiner and tested positive for Charas; that the recovery proceedings were also videographed; and that, having regard to the quantity recovered and the presence of the applicant in the vehicle, he is not entitled to the concession of bail. He, therefore, prayed for dismissal of the bail application.

5. Heard. Record perused.

6. The record reflects that the police intercepted Silver Mehran Car bearing registration No.AXX-344, which was being driven by co-accused Danish Khan, while the present applicant was the other occupant of the vehicle. On checking its rear portion, a gas cylinder was found installed therein which, according to the prosecution, was cut open with the help of a cutter and 30 slabs of Charas, each weighing one kilogram, were recovered therefrom. The recovered substance was forwarded to the Chemical Examiner and tested positive for Charas. From the personal search of the applicant, only an amount of Rs.1,000/- was recovered, whereas the alleged narcotic substance was recovered from the gas cylinder installed in the vehicle. The quantity of Charas allegedly recovered is substantial and prima facie attracts Section 9(1)(3)(e) of the Sindh Control of Narcotic Substances Act, 2024. However, the question for consideration at this stage is whether the material presently available against the applicant is sufficient to attribute conscious knowledge of the concealed contraband to him.

7. Learned counsel has contended that the applicant had hired the vehicle and was travelling therein merely as a passenger. The prosecution case itself, however, reflects that co-accused Danish Khan was driving the vehicle, whereas the present applicant was its other occupant. The alleged Charas was neither recovered from the person of the applicant nor lying openly inside the vehicle; rather, it was concealed inside a gas cylinder installed in its rear portion and could be retrieved only after the cylinder was cut open. In these circumstances, whether the applicant had knowledge of the contraband so concealed and was knowingly participating in its transportation requires determination after recording evidence at trial. At this stage, reference may usefully be made to the case of Muhammad Daud and another v. The State and another (2026 SCMR 115), wherein the Honourable Supreme Court observed as under: -

“9. In a case like the present one, where there is more than one accused and each has been attributed a certain quantity of the narcotic substance, total quantity recovered is to be attributed to each petitioner/accused separately at the stage of bail. In other words, conscious knowledge plays a significant role at the bail stage. It is an established principle that deeper appreciation of the record is generally not undertaken at the preliminary stage and the court only has to see, if the accused is prima facie connected with the offence. In cases where narcotic substance is recovered from the vehicle, conscious possession often arises for drivers and passengers, however, it is a question of fact. The doctrine of knowledge of the possession is based on the evidence available on record and judicial interpretation made by this Court and the High Courts over a period of times underscore the necessity of establishing this mental element after examination of the evidence available on record and only prosecution discharged the initial burden. The presumption arises and the defence has to discharge the same. The approach of this Court with respect to conscious knowledge of the possession somewhat sways but the dominance of the approach is that at bail stage, accused cannot be burdened with the total quantity recovered and is to be given the benefit of doubt for attributing him with only the quantity recovered from him or at his pointation. In case reported as Gul Manan v. The State (2021 SCMR 1804), this Court observed that the question of whether an accused, not driving the vehicle, had conscious knowledge of concealed narcotics needs serious consideration and should be determined by the trial court after recording evidence and in such like circumstances, the case against the accused, calls for further inquiry under section 497 Cr.P.C. In case reported as Nazeem Ullah and others v. The State (2020 SCMR 356), this Court granted bail while observing that the question of conscious knowledge or possession of the recovered narcotic substance should be determined at the time of trial. Likewise, in case reported as Anwar Khan and another v. The State (2006 SCMR 1343), this Court observed that mere presence in the car, which belonged to son-in-law, was insufficient to prove conscious knowledge.”

8. The principle emerging from the above authority is that, where narcotics are recovered from a vehicle occupied by more than one person, conscious knowledge of the particular accused assumes significance and has to be examined in the light of the material attributable to him. In the present case, the applicant was not driving the vehicle, and the contraband was not recovered from his person; rather, it was concealed inside a gas cylinder installed in the rear portion of the car and was recovered after the cylinder was cut open. The prosecution will, therefore, be required to establish through evidence whether the applicant was aware of the contraband concealed in such manner and whether he was knowingly involved in its transportation. In these circumstances, the applicant has

succeeded in making out a case for further inquiry as contemplated under Section 497(2), Cr.P.C.

9. In view of the above facts and circumstances, the applicant has succeeded in making out a case for grant of post-arrest bail. Consequently, this Criminal Bail Application is allowed and applicant Muhammad Sohail Pathan is admitted to post-arrest bail, subject to furnishing solvent surety in the sum of Rs.200,000/- and P.R. bond in the like amount to the satisfaction of the learned trial Court. The observations made herein are tentative in nature and shall not prejudice the case of either side at trial.

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