

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.S-99 of 2024

Date	Order with signature of Judge
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For hearing of bail application

Mr. Rukhsar Ahmed Junejo, Advocate for the applicant.
Syed Sardar Ali Shah, Additional P.G for the State.

Date of Hearing and Order:- 24th February, 2025

ORDER

RIAZAT ALI SAHAR, J :- Through this bail application filed under Section 497 of the Code of Criminal Procedure, the applicant, Gulsher Khan Junejo, seeks post-arrest bail in Crime No. 95 of 2024, registered at Police Station Hingorja-Khairpur, under Section 9-C of the Control of Narcotic Substances Act, 1997. His earlier bail plea was rejected by the learned trial Court vide order dated 13.11.2024.

2. According to the contents of the First Information Report (FIR) lodged by the complainant, ASI Ali Anwar Chang, on 20.09.2024, while on patrol duty in association with other police officials, he received credible spy information that five armed individuals were standing on the road near the graveyard of Sadique Ali Shah with the intent to commit a heinous offence. Acting upon such information, the complainant party proceeded to the identified location and, under the illumination of vehicle headlights, observed and identified four accused persons, including the present applicant, along with one unidentified individual, all armed with TT pistols. The police directed the accused to surrender, whereupon the accused persons allegedly opened straight fire upon the police party with the intent to commit their murder. In

retaliation, the police, acting in self-defence, returned fire, and the exchange of gunfire reportedly continued for approximately five minutes. Subsequently, the police party managed to apprehend the present applicant, Gulsher Khan, in an injured condition, while the remaining accused succeeded in fleeing from the scene. Upon search, the applicant was found in possession of a TT pistol and a plastic bag (*shopper*). Upon demand, the applicant failed to produce a valid licence for the recovered firearm. Upon opening the plastic bag, the police discovered a slab (*patti*) of *charas*, which, when weighed, amounted to 2,000 grams. Upon inquiry, the accused allegedly confessed to both personal consumption and sale of the contraband as a means of livelihood. The police also secured empty bullet casings from the place of occurrence, which were sealed at the spot. After completing the requisite legal formalities, the applicant and the recovered articles were taken to the police station, where separate FIRs were registered against him.

3. It is *inter alia* contended that the applicant is innocent and has been falsely implicated in the present case. It is further argued that three separate FIRs were registered against the applicant for the alleged police encounter, recovery of an unlicensed pistol, and recovery of *charas*, and that his arrest has been recorded in all three cases through a single *Mashirnama*. It is also submitted that in the two remaining FIRs, the applicant has already been admitted to bail by the learned trial Court. Moreover, the alleged place of occurrence is a public road, yet no independent private witness has been cited as a *mashir*, which constitutes a clear violation of Section 103 of the Code of Criminal Procedure, thereby rendering the case highly doubtful. It is further contended that the mere registration of multiple criminal cases cannot be a valid

ground for refusing bail. In view of the foregoing, the learned counsel for the applicant has prayed for the grant of bail. In support of his contentions, reliance has been placed on the case reported as *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934).

4. The learned Additional Prosecutor General (APG) has opposed the bail application on the ground that the applicant is involved in narcotics-related offences and, therefore, is not entitled to the concession of post-arrest bail. He has accordingly prayed for the dismissal of the bail application.

5. I have heard the learned counsel for the parties and have meticulously examined the material available on record. Upon careful consideration of the arguments advanced and a thorough scrutiny of the evidentiary record, it is evident that, undeniably, the alleged recovery of Charas amounts to 2,000 grammes. However, it is of overarching significance to highlight that Section 103 of the Code of Criminal Procedure (Cr.P.C) does not apply to narcotics-related cases, as explicitly stipulated under Section 20 of the Sindh Control of Narcotic Substances Act, 2024, which excludes the mandatory requirement of private witnesses in such matters. Nevertheless, it is rather improbable that no private witness was present at the scene, particularly when the recovery was allegedly effected in a public place. Despite acting on prior intelligence (spy information), the police failed to make any attempt to associate independent persons as witnesses to the alleged recovery. While it is an established principle of law that police officials are as competent as any other witness, it is equally incumbent upon them, where circumstances permit, to make all reasonable efforts to secure the presence of independent witnesses. In instances where such efforts are unsuccessful, they are duty-bound to provide a

cogent and plausible explanation for the absence of independent witnesses. The failure to do so not only raises concerns regarding procedural impropriety but also casts doubt upon the transparency and credibility of the prosecution's case.

6. It is also a matter of record that, apart from the FIR in the present case, the applicant is implicated in two other FIRs, bearing Crime No. 93 of 2024 and Crime No. 94 of 2024, both registered on 20-09-2024 at Police Station Hingorja on behalf of the State, concerning allegations of ineffective firing and possession of an unlicensed pistol. However, in both instances, the applicant has been granted post-arrest bail by the trial Court. Admittedly, the applicant has no previous convictions and has remained in custody since his arrest. Furthermore, his physical presence is no longer required for investigative purposes. In view of these circumstances, the continued incarceration of the applicant for an indefinite period, particularly in a case of this nature, appears to be unwarranted and contrary to the principles of justice, as prolonged pre-trial detention should not be employed as a form of punishment, in accordance with the settled legal principle that *bail is the rule, and jail is the exception*.

7. Furthermore, the allegation levelled against the applicant pertains to his purported possession of 2,000 grammes of Charas. *Prima facie*, this matter falls within the domain of the trial Court for adjudication. Notably, the Honourable Supreme Court, in the case of *Zahid Sarfaraz Gill* (supra), has categorically held that where law enforcement agencies fail to record or photograph the search, seizure, or arrest of an accused—despite the law permitting the use of modern devices and techniques—the credibility of the prosecution's case is materially undermined. In the instant matter, the police have

demonstrably failed to adhere to the test prescribed by the Supreme Court, thereby rendering the recovery and arrest process legally questionable.

8. Moreover, Section 17(2) of the Sindh Control of Narcotic Substances Act, 2024, explicitly mandates that the video recording of all raids, seizures, inspections, and arrests shall be conducted by the officer in charge of such operations. Given that the accused was apprehended pursuant to spy information, it was incumbent upon the police to document the entire operation, including the arrest and alleged recovery of Charas, through video recording. The failure to do so not only constitutes non-compliance with statutory provisions but also vitiates the evidentiary integrity of the prosecution's case. In light of the Supreme Court's binding precedent in *Zahid Sarfaraz Gill*, it is imperative that all future narcotics-related cases adhere strictly to the requirement of employing modern recording devices, ensuring transparency and adherence to due process.

Section 17(2) SCNS Act 2024 is reproduced as under:

17(2) The video recording of all raids, seizures, inspections and arrests shall be made by the officer in-charge of such operations.

9. The act of arresting individuals and falsely implicating them with illegal substances has seen a concerning rise in prevalence, particularly with the increasing smuggling, sale, and purchase of narcotics. In such circumstances, the aforementioned safeguards serve as crucial legal instruments in upholding the fundamental rights, freedoms, and liberties of citizens, who face a persistent threat of arbitrary arrest and wrongful implication in drug-related offences. The implementation of these protective measures is imperative to ensuring that

law enforcement procedures remain transparent, just, and in strict adherence to the principles of due process.

10. With regard to the alleged quantity of the substance in question, this Honourable Court is not precluded from granting bail, irrespective of the quantity involved. The mere weight of the contraband, in itself, does not operate as an absolute bar to the grant of bail. A similar view was taken in *Kunwar Singh v. State (2023 YLR Note 31)*, wherein bail was granted to the accused despite being named as the principal offender in an FIR concerning the recovery of multiple firearms and a substantial quantity of 498 kilogrammes of Charas. The principle emerging from this precedent underscores that the grant of bail is not to be mechanically denied solely on the basis of the quantity of the recovered substance but must instead be assessed in light of the overall facts and circumstances of the case, including the nature of evidence, procedural compliance, and the legal principles governing bail.

11. In view of the foregoing, *prima facie*, the applicant has succeeded in making out a case for *further enquiry* as envisaged under Sub-Section (2) of Section 497 Cr.P.C. Consequently, the instant Criminal Bail Application is allowed, and the applicant is admitted to post-arrest bail, subject to furnishing bail bonds in the sum of Rs. 200,000/- (Two Lakh) with one surety in the like amount to the satisfaction of the learned trial Court.

12. Before parting, it needs not to make clarification that the observations recorded above are tentative in nature, therefore, the trial Court shall not be influenced in any manner whatsoever.

JUDGE