

**THE HIGH COURT OF SINDH AT KARACHI**

Crl. Bail Application No. 133 of 2025

Applicant : Mst. Moeena  
through Mr. Ghulam Asghar  
Khuhro, advocate.

Respondent : The State  
Mr. Mumtaz Ali Shah,  
Assistant Prosecutor General

Date of hearing : 7<sup>th</sup> March, 2025

Date of Order : 7<sup>th</sup> March, 2025

**ORDER**

**Jan Ali Junejo, J.--** The present Criminal Bail Application has been filed on behalf of the Applicant/Accused, who is seeking post-arrest bail in connection with a case stemming from FIR No.1322 of 2024, registered at P.S. Site Superhighway Industrial Area (SSHIA), Karachi, under Section 9(1)(3-c), of the Control of Narcotic Substances Act, 1997 (amended in 2022). The Applicant/Accused initially approached the learned Sessions Court by filing Bail Application No.01 of 2025, which was subsequently dismissed by the Court of the learned Ist. Additional Sessions Judge, Malir, Karachi, vide Order dated 06.01.2025.

2. The facts relevant to the present criminal bail application are as follows:

*“Complainant SIP Abbas Ali Siyal, along with his team, was patrolling in a government vehicle when they reached House No. 115 in Dhani Bux Goth at approximately 05:45. They noticed a woman, Mst.*

*Moina W/o Muhammad Rafeeq, behaving suspiciously. With the assistance of LPC Rabia Razzaq, they apprehended her. Due to the absence of private witnesses, the subordinates were made witnesses. Upon searching the accused, a white plastic bag containing 1,050 grams of Charas wrapped in tape was recovered from her right hand. Additionally, Rs. 450 in cash was found in her left hand. The contraband was seized, sealed on the spot, and taken to the police station alongwith the lady accused. An FIR was registered under Section 9(1) 3-c of the Control of Narcotic Substances Act, 1997.*

3. The learned counsel for the Applicant has argued that this is the first bail application filed on behalf of the accused lady and no prior application has been made. He further argues that the accused is innocent and has been falsely implicated by the complainant with malafide intentions. He submits that the incident allegedly took place in a populated residential area, yet no independent private witness was associated with the arrest and recovery, which is a clear violation of Section 103 Cr.P.C, making the case fit for further inquiry. He also argues that no seller or purchaser was arrested at the spot, raising doubts about the prosecution's case. He points out that the alleged contraband was neither sent for chemical examination nor sealed separately at the spot, and the FIR lacks specific details such as shape, color, and number of pieces of the recovered contraband, making the prosecution story suspicious and concocted. He contends that no direct or indirect evidence connects the accused to the crime, and she suffers from serious medical conditions such as diabetes and asthma, requiring regular treatment, but has been falsely implicated by the police at the behest of a land mafia intending to usurp her property. He further argues that nothing was actually

recovered from the accused's possession, and she has no prior criminal record, making her entitled to the concession of bail.

4. The learned Additional Prosecutor General (APG) opposes the bail application, arguing that a huge quantity of contraband narcotics (1,050 grams of Charas) was recovered from the possession of the accused, directly connecting her to the offence. He further argues that narcotics-related offences are of grave nature, affecting society at large, and fall under prohibitory clauses where bail cannot be granted as a matter of right. He contends that the police officers, being official witnesses, are as credible as private witnesses, and their testimony cannot be disregarded merely because no private witness was associated. He submits that medical conditions do not provide immunity from criminal liability, and the recovery was made on the spot, making the accused ineligible for bail. Lastly, he argues that the offence falls under Section 9(c) of the CNSA, which carries severe punishment, and thus the bail application should be dismissed in the interest of justice.

5. I have given due consideration to the arguments advanced by the learned counsel for the applicant/accused, as well as the learned Deputy Prosecutor General. Furthermore, I have meticulously examined the material available on record with utmost care and judicial prudence. Upon a thorough and meticulous scrutiny of the case record, it reveals that the Applicant was apprehended red-handed, and a substantial quantity of contraband (1,050 grams of Charas) was recovered from her immediate possession. The applicant has not been able to establish any enmity or ill-will of the police to justify her false implication. The absence of private witnesses does not per se invalidate the recovery, as the police officers are

competent witnesses under the law. This quantity squarely falls within the ambit of Section 9(1)(3)(c) of the Control of Narcotic Substances Act, 1997 (as amended in 2022), which prescribes a punishment of imprisonment extending up to fourteen years but not less than nine years, in addition to a fine ranging from a minimum of eighty thousand rupees to a maximum of four hundred thousand rupees. The offence in question falls within the prohibitory clause of Section 497(1) of the Code of Criminal Procedure, 1898 (Cr.P.C.), thereby precluding the applicant/accused from claiming bail as a matter of right or concession. In Case of *Noor Khan v. The State (2021 SCMR 1212)*, it was held by the Honourable Apex Court that: *“Red-handed with seizure of considerable quantity of the contraband squarely brings petitioner’s case within the remit of Prohibition, contemplated by section 51 of the Control of Narcotic Substances Act, 1997; his claim of false implication is an issue that cannot be attended without going beyond the barriers of tentative assessment, an exercise prohibited by law”*. Reference may also be made to another Case of *Dolat Khan v. The State and others (2016 SCMR 1447)* wherein it was held by the Apex Court that: *“The petitioner was apprehended at the spot by the raiding party and as per the FIR he himself handed over two Nos. packets containing Charas and opium to the complainant (SI). Learned counsel for the petitioner has not been able to refer to anything from the record which could suggest that the complainant or any other member of the raiding party had any animus against the petitioner. The case of the petitioner falls within the prohibitory clause of section 497 of the Code of Criminal Procedure. In this view of the matter coupled with the fact that huge quantity of narcotics has been recovered from his possession, petitioner is not entitled for the concession of bail”*. The plea of medical illness does not, by itself, justify the grant of bail, especially in cases involving serious narcotics offences. The applicant has failed to make out a case for further inquiry under Section 497(2) Cr.P.C. Given

the prima facie evidence, the serious nature of the offence, the huge quantity of contraband recovered, and the lack of reasonable grounds for further inquiry, the Applicant has not been able to make out a case for bail.

6. Considering the substantial prima facie evidence against the applicant, her arrest at the scene, and the seizure of a significant quantity of contraband narcotics, I find no reasonable justification to categorize this case as one requiring "further inquiry" under Section 497(2), Cr.P.C. The serious nature of the allegations and the severity of the potential punishment further eliminate any presumption in favor of granting bail. Consequently, the applicant does not qualify for bail at this stage.

7. In view of the above reasons, the bail application filed by the applicant lacks merit and is accordingly dismissed. It is further clarified that the observations made in this order are limited to the present bail proceedings and shall not impact or prejudice the merits of the case during the trial.

**JUDGE**