

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Cr. Bail Application No.S- 1320 of 2024
[Muhammad Azeem v. The State]

Applicant : Muhammad Azeem
through Mr. Imtiaz Ali Abbasi, Advocate

The State : Through Mr. Irfan Ali Talpur, A.P.G.

Date of hearing & Decision : **10.02.2025**

O R D E R

MIRAN MUHAMMAD SHAH, J :-Through this Criminal Bail Application, Applicant Muhammad Azeem seeks post arrest in Crime No. 77 of 2024 registered at Police Station Badin under Section 9(c) CNS Act. Earlier the Applicant moved bail application before the Judge, Special Court for Anti-Narcotics / Sessions Judge Badin which was declined vide order dated 19.10.2024, with following observations:

7. The main plea of learned defence counsel that applicant/ accused person is innocent, however, from perusal of FIR it reveals that applicant/ accused was arrested at the spot and from his possession a shopper containing four pieces of chas weighing 4146 grams was recovered, therefore, this contention of learned counsel having no force. The other plea of learned defence counsel that despite day time incident no independent person was associated as witness. Apparently both the mashirs are police officials, however, as per section 25 of Control of Narcotic Substance Act, 1997, which exempt provision of section 103 Cr.P.C. Moreover, law and order situation in the area has been worsening and no private person could dare to become witness against a Narcotics Seller, therefore, this contention of learned defence counsel has also no force. The other main plea of the learned defence counsel that Complainant SIP Bakhshan Khan Suhag has involved the applicant/ accused person in this case at the instance of SHO P.S Dehi against whom, the applicant's mother had filed application under section 22-A and B Cr.P.C: apparently, learned defence counsel has produced an application filed by applicant's mother Mst. Hajani wherein she had prayed for providing protection and such order has also been produced by learned defence counsel; however, learned defence counsel has failed to establish any link of complainant with any private individual on whose instance, the complainant has lodged this FIR against the applicant/ accused person. Moreover, SIP Bakhshan Khan Suhag is posted at CIA Badin and he is not subordinate of SHO P.S Dehi. So-far plea of learned defence counsel that no photograph or video was made and Honourable Supreme Court of Pakistan has given observations; it is pertinent to mention here that Control of Narcotic Substance is special law wherein section 29 has been inserted; I would like to re-produce section 29 of Control of Narcotic Substance Act as under:

29. Presumption from possession of illicit articles: in trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of-

- (a) any narcotic drug psychotropic substance or controlled substance;
- (b) any cannabis, coca or opium poppy plant growing on any land which he has cultivated.
- (c) any apparatus specially designed or any group of utensils specially adapted for the production or manufacture of any narcotic drug, psychotropic substance or controlled substance or;
- (d) any material which have undergone any process towards the production or manufacture of narcotic drug psychotropic substance or controlled substance or any residue left of the materials from which a narcotic drug, psychotropic substance or controlled substance has been produced or manufactured for the possession of which he fails to account satisfactorily.

- 8. From bare perusal of section 29 of Control of Narcotics Substance Act, the applicant/ accused has to establish otherwise at trial. The provision of this special law is entirely different from the provision of common law. Furthermore, in this case complainant has recovered huge quantity of 4146 grams chars from the possession of applicant/ accused person, which provides punishment for 14 years and falls under the prohibitory clause of section 497 Cr.P.C. Moreover, section 51 of Control of Narcotic Substance Act, 1997 bars grant of bail in such likes. Furthermore, the learned defence counsel has failed to establish any specific enmity on the part of complainant for false involvement of the applicant/ accused in this case.
- 9. Moreover, applicant/ accused had already been involved in crime No. 41 of 2024 of P.S Dehi and crime No. 52 of 2024 of P.S Pangrio
- 10. The case laws relied by learned defence counsel having different facts and circumstances and are not applicable to this case.
- 11. In the light of above facts and circumstances, I am of the view that applicant/ accused Muhammad Azeem son of Mohram Chandio has failed to make out a case for grant of bail. Therefore, I hereby dismiss this bail application.”

2. Brief facts of the prosecution case as per FIR are that on 29-09-2024 at 1730 hours, a police party of CIA Badin headed by SIP Bakhshan Khan Suhag arrested applicant/ accused Muhammad Azeem from Tando Bago-Jhudo road near Malik stop, Taluka Tando Bago and recovered one black colour shopper from the possession of applicant/ accused person containing four pieces of chars weighing 4146 grams whereas co-accused Akhtar Ali made his escape good throwing a shopper containing two pieces of chars weighing 1018 grams. Such FIR was lodged.

3. Learned counsel for the applicant/ accused argued that the applicant is innocent and he has been falsely implicated in this case; that no independent witness was associated despite the recovery of contraband was made in broad day light; that the Applicant and his brother have been booked in the case at the influence of one Zaman Memon who was clerk in SSP Office Badin as the mother of Applicant namely Mst.Hajyani had filed an application under section 22-A & B Cr.P.C before learned 2nd Additional Sessions Judge, Badin for providing protection from said Zaman Memon and others and SHO PS Dehiat the instance of said Zaman Memon on 28-09-2024 had taken him and subsequently handed over to CIA police Badin registered false FIR against the Applicant; that opponent side is influential who had also previously also got the applicant/ accused involved in Gutka case, whereupon the applicant's mother had moved application for transfer of investigation which was allowed on 9-10-2024; that prior to this, SHO P.S Dehi had tried to arrest the applicant/ accused and his brother when they had appeared before Civil Judge and Judicial Magistrate, Tando Bago in Crime No. 41 of 2024; that no any photograph or video of place of incident was made as the observations of Honourable Supreme Court in the recent judgment. He lastly submitted that the case of Applicant requires further inquiry; therefore, he prayed for grant of bail to him.

4. On the other hand, learned APG opposed the bail application on the ground that the applicant/ accused was arrested from the spot and from his possession a shopper containing four pieces of chars weighing 4146 grams was recovered whereas applicant's brother namely Akhtar Ali made his escape good while throwing shopper which containing 1018 grams chars; that the offence falls within the prohibitory clause of Section 497 Cr.P.C.; that prior to this, applicant/ accused was involved in Crime No. 41 of 2024 of P.S Dehi and Crime No. 52 of 2024 of P.S Pangrio registered under Section 8 SPPMSS and Use of Gutka and Mainpuri Act. He lastly prayed for dismissal of instant bail application.

5. I have heard learned counsel for the parties and gone through the record.

6. Tentative assessment of record reflects that the name of Applicant / accused has been mentioned in the FIR from whom 4146 kg of charas was recovered from the spot; that the prosecution other than the instant case has disclosed two other criminal cases of narcotics against the Applicant. Prima-facie there is no enmity of police with the Applicant; that the offense with which the applicant is charged is punishable with death or imprisonment of life. The honourable Supreme Court in the case of Socha Gul v. The State (SCMR 2015

1077), has held that bail should be granted sparingly in narcotics cases keeping in mind Section 51 of Control of Narcotic Substances Act, 1997, which provides a note of caution as well as the fact that the offense amounts to a crime against society. In the case of Noor Khan v. The State(2021 SCMR 1212), the honourable Supreme Court declined bail to an accused from whom 1320 grams of cannabis was recovered by the police. About non-association of private persons, Section 25 of the CNSA exempted their presence in narcotics cases even otherwise the evidence of police officials is as good as any other citizen. Regarding above, the Supreme Court in the case of Zafar v. The State(2008 SCMR 1254) held that Sections 20 to 22 of the CNS Act, 1997 are directory and their noncompliance would not be a ground for holding the trial/ conviction bad in the eyes of law.

7. Prime facie the applicant was caught red-handed with huge quantity of Narcotics as disclosed in the FIR. The Supreme Court in the recent judgment has held that this kind of offense is heinous as it contributes to the menace of drugs having grave repercussions on society, besides the applicant has failed to point out any material to suggest that he was falsely implicated in the aforesaid crime; in absence of such material no case of further inquiry has been made out.

8. The offense falls within the prohibitory clause of Section 497 Cr.P.C. The impugned order 19.10.2024 is well reasoned, based on correct principles of law and does not call for interference by this Court.

9. This bail application was dismissed in open Court on 10.02.2025 and above are the reason of such dismissal. Needless to mention that the trial court shall conclude the trial within two months and if not concluded at least the complainant must be examined. Thereafter if any material comes in favor of the applicant he may repeat the bail application which shall be decided on its merits and the observation recorded hereinabove will not come in his way

JUDGE