

his possession, as such, he is not entitled to the concession of bail in the present case. He lastly prayed for dismissal of the bail application.

I have considered the arguments advanced by learned counsel for the applicants/accused and learned Special Prosecutor ANF as well as perused the material available on the record.

As per case of prosecution allegedly the police recovered charas from possession of the applicant when he came under the Bacha Khan Bridge opposite Al-Watan Hotel at about 2215 hours and people were gathered there but no any independent person has been cited as witness or mashir in the case. No doubt, the evidence of the police officials is as good, as other witnesses, but when the whole case rests upon sole evidence of police officials, their evidence requires deep scrutiny at trial.

The Supreme Court of Pakistan in the order dated 22.11.2023 passed in Criminal Petition No.1192 of 2023 (Zahid Sarfaraz Gill v. The State) while granting bail to the petitioner dilated upon the section 25 of Control of Narcotic Substances Act, 1997 and section 103 of the Code of Criminal Procedure, 1898, inter alia, has held as under:

“5. We are aware that section 25 of the Act excludes the applicability of section 103 of the Code of Criminal Procedure, 1898 which requires two or more respectable inhabitants of the locality to be associated when search is made. However, we fail to understand why the police and members of the Anti-Narcotics Force (‘ANF’) do not record or photograph when search, seizure and/or arrest is made. Article 164 of the Qanun-e-Shahadat, 1984 specifically permits the use of any evidence that may have become available because of modern devices or techniques, and its Article 165 overrides all other laws.

6. In narcotic cases the prosecution witnesses usually are ANF personnel or policemen who surely would have a cell phone with an in-built camera. In respect of those arrested with narcotic substances generally there are only a few witnesses, and most, if not all, are government servants. However, trials are unnecessarily delayed, and resultantly the accused seek bail first in the trial court which if not granted to them is then filed in the High Court and there too if it is declined, petitions seeking bail are then filed in this Court. If the police and ANF were to use their mobile phone cameras to record and/or take photographs of the search, seizure and arrest, it would be useful evidence to establish the presence of the accused at the crime scene, the possession by the accused of the narcotic substances, the search and its seizure. It may also prevent false allegations being levelled against ANF/police that the narcotic substance was foisted upon them for some ulterior motives.”

Since the judgment rendered by the Supreme Court in the case of Zahid Sarfaraz Gill *supra* directed to record or take photographs at the time of search of the accused when search, seizure, or arrest is made as the law permits the use of modern devices or techniques but the police failed and neglected to adhere the dicta laid down by the Supreme Court, which is a constitutional command under Article 199 of the Constitution, therefore, appreciating whether the applicant was arrested with charas in blue shopper in his right hand requires deeper appreciation.

In the instant case the applicant/accused has been in continuous custody since his arrest and is no more required for any investigation nor the prosecution has claimed any exceptional circumstance, which could justify keeping him behind the bars for an indefinite period pending determination of his guilt. There appears no likelihood of tampering in the prosecution case. It also appears that the applicant is a first time offender as no previous record / CRO is produced / available regarding his involvement in narcotics trade or transportation. It is well settled that truth or otherwise of the charges could only be determined at the conclusion of trial after taking into consideration evidence adduced by both the parties.¹ Moreover, it is also settled principle of law that bail cannot be withheld as punishment.

In principle bail does not mean acquittal of the accused but only change of custody from police to the sureties, who on furnishing bonds take responsibility to produce the accused whenever and wherever required to be produced. On the aforesaid proposition, I am fortified with the decision of the Supreme Court on the case of *Haji Muhammad Nazir v. The State* [2008 SCMR 807].

In view of the peculiar facts and circumstances of the case, I am of the opinion that prima facie, the applicant/accused has succeeded to bring his case within the purview of further inquiry and as such is entitled to bail and for this reason, the applicant/accused was admitted to bail subject to his furnishing solvent surety in the sum of Rs.2,00,000/- and P.R. Bond in the like amount to the satisfaction of the trial Court, by my short order dated 24.03.2025.

Needless to mention here that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or

¹ *Muhammad Nadeem Anwar and another v. National Accountability* [PLD 2008 SC 645]

influence the trial Court in reaching its decision on the merits of the case. It is, however, made clear that in the event if, during proceedings, the applicant/accused misuses the bail, then the trial court would be competent to cancel his bail without making any reference to this Court.

Above are the reasons of my short order dated 24.03.2025.

J U D G E