

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

Criminal Bail Application No.S-11 of 2025

Applicant: Muhammad Kashif Son of Muhammad Ashraf  
through Mr. Zeeshan Hyder Rajput, Advocate.

Respondent: The State through Ms. Sobia Bhatti, A.P.G.

Date of hearing: 25.03.2025

Date of decision: 11.04.2025

**ORDER**

**Dr.Syed Fiaz ul Hasan Shah, J.-** The Applicant sought his post-arrest bail in Crime No.218 of 2024 registered with Police Station Matli, Badin under section 9 (i) C CNS Act, 2019.

2. Briefly, the facts of the case are that on 24<sup>th</sup> September 2024, at approximately 2100 hours, a police party from the Matli Police Station, led by SIP Lakhee Nizamani, was conducting a routine patrol when they apprehended the applicant/accused at an open plot in Nawaz Town, Taluka Matli. Upon his arrest, the accused was found in possession of a black-colored shopper containing pieces of charas, which collectively weighed **2030 grams**. As a result, an FIR was registered based on this incident.

3. It is contended by the Counsel for the Applicant that the applicant is innocent and has falsely been implicated in the case and the narcotics has been foisted upon the Applicant; that no video recording was made by Complainant/IO and PWs in respect of alleged offence which is clear violation of observation of Honourable Supreme Court; that all the witnesses are police officials in spite of the fact that the place of incident was thickly populated area; that the alleged recovery of 2030 grams of charas is foisted upon the applicant. Learned counsel lastly submits that in the similar circumstances, the Hon'ble Supreme Court has granted bail to accused from whom 1833 grams of charas was recovered. In support of his arguments he relied upon the case of Zahid Sarfaraz Gill v. The State (2024 SCMR 934).

4. The Learned APG submits that chemical report confirms that the seized substance was narcotic charas and the total quantity is 2030 grams, which as per the Table in Section 9(1) of the Control of Narcotic Substances Act, 1997 comes under clause (c) of its third category which prescribes sentence for a minimum imprisonment of nine years and a maximum imprisonment of fourteen years, and fine. The APG further states that the Applicant was caught red handed by the police at public place and the case against him is fully established; therefore, he is not entitled for grant of bail.

5. I have heard learned counsel for the Applicant, APG and perused the material available on record with their assistance.

6. I have noticed that the Narcotics cases are being registered by the ANF, Excise Police and Sindh Police Officials as normal course of routine and same cyclostyle cases are filed and dealt with on regular basis by the Courts. Similarly, the Prosecution department are not

providing proper legal assistance in filing the cases so also the prosecution department has failed to follow the observations and findings which have given by the Hon'ble Supreme Court of Pakistan from time to time in narcotics related cases despite.

7. On perusal of material available on record, as a normal course, in the present case, the prosecution witnesses are police officials and no independent witness has been cited in spite of the fact that the place of incident was thickly populated area. Undoubtedly, Section 25 of the CNS Act, 1997 stipulates the rule of exclusion of private or independent witnesses as mandated under section 103 Cr.P.C. However, the said rule is not absolute. In my humble view, the seizing officer has to meet the pre-conditionalities. For instance, the compliance of Section 21 of the CNS Act, 1997 for non-compliance of Section 103 of the Criminal Procedure Code, 1898 by invoking Section 25 of the CNS Act, 1997 or that by the time warrant could be obtained, a possibility either of escape of the accused from crime scene or conceal or removal of evidence may involve which may put the prosecution in trouble to unearth the evidence. Guidance can be taken from the dictum of the Hon'ble Supreme Court in case of **“Zardad vs. The State” (1991 SCMR 458)** and **“The State vs. Muhammad Amin” (1999 SCMR 1367)** held former citation that:

“It is not an absolute requirement that in every case witness of the public must necessarily be produced. It depends upon the facts of each case. In the case in hand the Police Officers were in the ordinary course of duty looking for the suspects and errant.”

8. Furthermore, the complainant has not recorded the movie or captured the pictures when search, seizure, preparation of

Memorandum of Recovery and arrest at crime scene have not procured. The Hon'ble Supreme Court in "**Zahid Sarfaraz Gill v. The State**" (2024 SCMR 934) which is conducive and delineated 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 inbuilt 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 leveled against ANF/ police that the narcotic substance was foisted upon them for some ulterior motives.

7. Those selling narcotic substances make their buyers addicts, destroy their state of mind, health and productivity, and adversely affect the lives of their family members. The very fabric of society is damaged. ANF and the Police forces are paid out of the public exchequer. It is incumbent upon them to stem this societal ill. The Prosecution services, paid out of the public exchequer, is also not advising the ANF / police to be do this simple act of making a recording and / or taking photographs as stated above.

8. A consequence of poor investigation, not supported by evidence adversely affects the cases of the prosecution. The courts, which too are sustained by the public exchequer, are burdened with having to attend bail applications because the commencement and conclusion of the trial is delayed. It is time that all institutions act professionally and use all available lawful means to obtain evidence. A credible prosecution and adjudication process also improves public perception. We expect that all concerned will attend to these matters with the attention that they demand, because the menace of narcotic substances in society has far reaching consequences: by destroying entire households, creating societal problems and casting a heavy financial burden on the State when drug addicts are required to be treated. Moreover, research indicates that drugs addicts resort to all methods to obtain drugs, including committing crimes.”

9. In my tentative assessment while keeping into juxtaposition with the alleged recovery in which all the PWs together with the dictum laid down by the Honorable Supreme Court of Pakistan, the complainant bypassed the dictum and observation recorded in the Zahid Sarfaraz

(supra) which have made the case of applicant of further inquiry and as such the concession of the bail is granted to the Applicant subject to his furnishing solvent surety in the sum of Rs. 100,000/- and PR bond in the like amount to the satisfaction of Trial Court.

**10.** Any finding or observation recorded hereinabove is only for the purpose of deciding the present bail application and it shall not affect the trial of the case and the trial Court would reach to its own merit after recording the evidence of the prosecution side and statement or evidence of the applicant.

JUDGE

Muhammad Danish\*