

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 2689/2024

Applicant : Hakim Ali son of Muhammad Qasim
Through Mr Muhammad Zareen Satti, learned
advocate

Respondent : The State
through Special Prosecutor ANF.

Date of hearing : 08-04-2025

Date of order : 21.04.2025

O R D E R

KHALID HUSSAIN SHAHANI, J. The applicant seeks post-arrest bail in case bearing crime No. 32 of 2024 offence under Section 6, 9(1)(3)(c) of the Control of Narcotic Substances Act, 1997 (as amended by Act of 2022) at Police Station ANF Clifton, Karachi. Earlier the bail application of applicant was dismissed by the learned Special Court-II, CNS, Karachi, vide order dated 02.09.2024.

2. Concisely, the prosecution's case is that on 07.07.2024, Inspector Shahnaz Fatima of Police Station ANF Clifton, Karachi, acting upon prior information received through superior officers, proceeded to a location near the PSO Petrol Pump, Main Korangi Road, DHA Phase-V, Karachi, where it was reported that a known drug dealer, Hakim Ali, resident of Benazir Chowk, Karachi, would deliver narcotics to a specific customer. The complainant, along with subordinate staff, reached the designated place at about 1000 hours and apprehended the accused Hakim Ali on the spot, who was allegedly holding a blue-colored shopper. In the presence of mashirs, the bag was opened and was found to contain a substance wrapped in yellow tape, later determined to be *charas* weighing 1100 grams. Consequently, the FIR was registered.

3. Learned counsel for the applicant has contended that the applicant is innocent and has been falsely implicated in this case with malafide intention. It is asserted that no recovery whatsoever was made from the applicant at the place of occurrence. Counsel submits that the incident, as narrated, is a fabricated version, and that in fact, the applicant was unlawfully taken from his residence on 06.07.2024 by ANF personnel, who subsequently demanded illegal gratification.

Upon his refusal to comply, he was falsely booked in the instant case. It is further argued that all the prosecution witnesses are official functionaries, and no private independent witness was associated with the recovery proceedings, which casts doubt upon the credibility of the prosecution case. In support of his contentions, learned counsel has placed reliance upon *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934), 2024 YLR 1487, and 2021 P.Cr.L.J 443.

4. On the other hand, learned Special Prosecutor for ANF has opposed the grant of bail and submits that the applicant was apprehended red-handed and a substantial quantity of *charas* was recovered from his possession. He argued that no previous enmity has been alleged against the complainant party and that the provisions of Section 35(1) of the CNSA (Amendment) Act, 2024, impose a statutory embargo on grant of bail. It is submitted that narcotics offences are on the rise and are causing serious damage to the fabric of society, particularly to the youth, thereby justifying a strict view against such offences.

5. Upon examination of the record, it transpires that the applicant is alleged to have been found in possession of 1100 grams of *charas*. Under the 2022 amendment to the CNSA, this quantity falls under Section 9(1)(3)(c), attracting a sentence ranging from a minimum of 9 years to a maximum of 14 years. However, in light of the law laid down in *Jamaluddin alias Zubair Khan v. The State* (2012 SCMR 573) and *Ismail Aijaz v. The State* (2023 P.Cr.L.J 114), the quantum of likely sentence must be assessed at the bail stage for determining whether the case falls within the prohibitory clause of Section 497(1), CrPC.

6. Furthermore, the Hon'ble Supreme Court in case of *Aya Khan v. The State* (2020 SCMR 350) categorized the recovery of 1100 grams of *charas* as a borderline case and extended the benefit of bail to the accused therein. In the present case as well, the alleged recovery matches that borderline threshold.

7. Valuable guidance may also be drawn from *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934), wherein the Hon'ble Supreme Court laid stress on the evidentiary value of modern tools such as video recordings and photographs, especially where the entire prosecution case rests solely on official witnesses. The Court observed that the absence of such documentation, when the recovery is made in public during daylight, raises serious doubts regarding the integrity of the recovery proceedings. The Hon'ble Apex Court held that such cases call for further inquiry under Section 497(2) CrPC and granted bail accordingly. The Court

also directed law enforcement bodies to consider amending their rules to mandate such evidentiary documentation.

8. Applying the above principles to the facts of the present case, it is noted that the recovery, though allegedly effected in broad daylight from a public place, has not been substantiated by any photographic or video evidence, nor has any independent witness been associated. This raises doubts about the genuineness of the prosecution story at this stage. Moreover, the plea of malafide, though yet to be established through evidence, cannot be brushed aside entirely, particularly when the applicant has come forward with a specific version of prior unlawful detention and demand for gratification. In the circumstances, the case against the applicant, for the present purposes, appears to call for further inquiry within the meaning of Section 497(2) CrPC.

9. Accordingly, the applicant is admitted to pre-arrest bail, subject to his furnishing solvent surety in the sum of Rs. 100,000/- (Rupees One Hundred Thousand only) and a personal bond in the like amount to the satisfaction of the learned trial Court.

J U D G E