

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 910 of 2025.

Applicant : Sadiq Ali son of Sakhi Dad,
Through Mr. Shah Imroze Khan, Advocate

Respondent : The State
Through Mr. Mohammad Mohsin Mangi, APG.

Date of hearing : 09.05.2025

Date of order : 26.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicant Sadiq Ali seeks post-arrest bail in a case bearing Crime No. of 26/2024 registered at Police Station Excise Korangi Karachi, for offence under Sections 9(2)(9) of the Control of Narcotic Substances Act, 1997 (as amended by Act XX of 2022). His earlier bail plea was declined by the court of learned IIIrd Additional Sessions Judge Karachi East vide order dated 26.12.2024.

2. Briefly, the prosecution case is that the complainant, Excise AETO Shaukat Ansari, along with subordinates acting on spy information, apprehended the applicant and co-accused Adil Jan at Kala Board near Nehal Hospital, Karachi. A white Toyota Corolla GLI bearing registration No. BND-313 was intercepted, and upon search, four plastic boxes containing a crystalline substance suspected to be Methamphetamine ("Ice") were recovered from beneath the rear seat of the vehicle. The total weight of the substance, as initially recorded on a digital scale available in the excise team's investigation kit, was stated to be 4.08 kilograms. Both accused were arrested on the spot. Consequent upon; case was registered inter alia on the above facts.

3. Learned counsel contended that the applicant has been falsely implicated due to mala fide intentions and ulterior motives; that no recovery was effected from his personal possession; and that the narcotics were allegedly recovered from a vehicle not owned by the applicant. It was argued that the place of arrest being a public area, no effort was made to associate private witnesses as required under Section 103 Cr.P.C. Counsel pointed out material contradictions between the quantity recovered as per

the FIR (4.08 kg) and that reported by the chemical examiner (3.80 kg), casting doubt on the integrity of the recovery. It was further argued that the co-accused Adil Jan has already been admitted to bail by the Court of learned Additional Sessions Judge Karachi East vide order dated 05.12.2024, hence the rule of consistency is attracted. Reliance was placed on the case law reported as 2019 MLD 1929, PLJ 2018 Cr.C 605 (D.B), 2023 YLR 1291, 2012 SCMR 573, un-reported order of Lahore High Court vide Cr. Misc. Application No. 5175/B/2023, 2024 SCMR 934.

4. Conversely, the learned Additional Prosecutor General opposed the bail application on the ground that the recovery of a substantial quantity of Methamphetamine has been duly corroborated by the chemical examiner's report. It was submitted that sufficient incriminating evidence connects the applicant to the recovered contraband and the charge sheet has already been submitted.

5. Record reflects, the applicant is shown as a driver of Vehicle No. BND-313 and from its concealed box 4.08 Grams of methamphetamine was recovered. In this view of the matter, his involvement in the alleged transportation of narcotic substances cannot, at this stage, be ruled out. During the course of arguments, learned counsel for the applicant apprised the Court that co-accused Adil Jan was kept in column No.2 due to insufficient evidence against him and the opinion of the learned Magistrate is still awaited. Moreover, no allegations of enmity, animosity or mala fide is levelled against the prosecution witnesses, whereas the prosecution has, prima facie, placed sufficient incriminating material on the record. The case law cited by learned counsel for the applicant is distinguishable and not applicable to the facts and circumstances of the present case. In cases involving the recovery of narcotics, the discretion conferred under Section 497, Cr.P.C. must be exercised with caution, and not in a routine or liberal manner, keeping in view the larger public interest.

6. The Honourable Supreme Court in *The State v. Javed Khan* (2010 SCMR 1989), while dealing with a similar matter, has observed as under:

"S. 497(5)---Control of Narcotic Substances Act (XXV of 1997), Ss. 9(c) & 51(1)---Recovery of narcotic substances---Bail, cancellation of---Death sentence---Narcotic substance weighing 5½ kilograms was recovered from the accused who was granted bail by the High Court---Validity---Case of the accused attracted Section 9(c) of the Control of Narcotic

Substances Act, 1997, falling within the prohibitory clause of Section 497, Cr.P.C., and the bar contained in Section 51(1) of the said Act, which applies to offences punishable with death---Order of the High Court granting bail held to be arbitrary, without application of judicial mind, and contrary to settled principles of law---The Supreme Court set aside the said order."

7. The Control of Narcotic Substances Act, 1997 is a special law which not only consolidates but also strengthens the legal regime concerning narcotic drugs and psychotropic substances. It interdicts production, processing and trafficking of such substances, and prescribes stringent punishments. It also establishes Special Courts having exclusive jurisdiction to adjudicate such offences. Section 51 of the said Act imposes a statutory bar on the grant of bail to an accused involved in offences punishable with death. I would like to prefer embargo imposed by section 51 of the CNSA, on grant of bail with regard to the case of applicant. For ease of reference, sections 9(2)(9) of CNS(Amendment) Act, 2022 and S. 51 of CNS Act, 1997 are reproduced hereunder:

"9. Punishment for contravention of sections 6, 7 and 8.--- whoever contravenes the provisions of sections 6, 7 or 8 regarding psychotropic substances shall be punished with punishment as given in column (3) of the TABLE below with regard to quantity of psychotropic substances given in column (2) thereof, namely:-

Sr. No.	Offence with regard to quantity of psychotropic substance	Punishment
(1)	(2)	(3)
1	*****	*****
2	*****	*****
3	*****	*****
4	*****	*****
5	*****	*****
6	*****	*****
7	*****	*****
8	*****	*****
9	Exceeding four kilograms	Imprisonment which shall not be less than life imprisonment along-with fine which shall not be less than two million rupees.

Provided further that if recovered psychotropic substance is methamphetamine (ICE) given at serial number 47. of the Schedule-I to this Act and quantity exceeds four kilograms, punishment may be death or life imprisonment and fine which may not be less than two and half million.

8. Section 51 of Control of Narcotics Substance Act, 1997 provides that;

(1) No bail to be granted in respect of certain offences:---(1) Notwithstanding anything contained in sections 496 and 497 of the Criminal Procedure Code, 1898 (V of 1898), bail shall not be granted to an accused person charged with an offence under this Act or under any other law relating to narcotics where the offence is punishable with death.

(2) In the case of other offences punishable under this Act, bail shall not be normally granted unless the Court is of the opinion that it is a fit case for the grant of bail and against the security of a substantial amount."

9. The discretion under Section 497, Cr.P.C., thus, becomes inapplicable unless the Court is satisfied that the charge is manifestly false or appears to be groundless. It is well-settled that at the bail stage, the Court is to undertake a tentative assessment of the record without entering into a deeper appreciation of evidence. Reliance in this regard is placed on *Saleh Muhammad v. The State* (PLD 1986 SC 211) and *The State v. Zubair and others* (PLD 1986 SC 163).

10. As regards the contention of learned counsel that recovery was not witnessed by any member of the public, it may be noted that Section 25 of the CNS Act expressly excludes the application of Section 103, Cr.P.C., thereby rendering such objection legally misconceived.

11. It would not be out of place to observe that involvement in such activities tarnishes the image of the country in the comity of nations. Learned counsel for the applicant has forcefully urged this Court to record a conclusive finding exonerating the applicant of the alleged offence, relying on precedents of this Court and the Apex Court. However, this Court is not inclined to issue such a definitive declaration at this preliminary stage, as every criminal case turns on its own peculiar facts and circumstances.

12. The reliance placed by the applicant on the purported exoneration of a co-accused is misconceived, as the charge sheet in that regard has yet to be accepted by the competent court. Furthermore, the applicant has failed to present any plausible or cogent defence to justify his non-involvement in the alleged offence. On the contrary, the recovery has been duly supported by the statements of all prosecution witnesses, and stands further corroborated by the positive chemical analysis report. Each case must be adjudged on its own merits. The term "possession" as used in the CNS Act,

1997, is to be construed broadly to encompass transportation, dispatch and delivery.

13. The applicant plea of false implication raises a factual controversy which cannot be resolved at the bail stage without delving into evidence, a course barred by law. Guilt or innocence can only be determined upon a full-fledged trial based on the evidence adduced by the prosecution and rebutted by the defense.

14. In view of the foregoing, the present bail application stands dismissed. The learned Trial Court is expected to expeditiously conclude the trial of the subject case in accordance with law. The observations made herein are, therefore, purely tentative in nature and shall not prejudice the case of either party nor shall they influence the learned Trial Court, which shall proceed strictly in accordance with law and on the basis of evidence.

JUDGE