

ORDER SHEET
THE HIGH COURT OF SINDH KARACHI

C.P No. D-2059 of 2025

DATE

ORDER WITH SIGNATURE OF JUDGE

Hearing

1. For order on office objections No.1 to 3.
2. For hearing of main case.

10.07.2025

Mr. Zeeshan Asad, Advocate for the Petitioner.

Mr. Ali Haider Saleem, Addl. P.G

Zulfiqar Ali Sangi J:- The Petitioner namely Sajid Hussain son of Ghulam Qadir Misan, has been booked in FIR being Crime No.107/2025 registered at P.S Thatta, for offence under Section 9 (2)(4) CNS Act 2024. The Petitioner has approached this Court for grant of post arrest bail.

2. As briefly stated the prosecution case as per FIR registered by the complainant SIP Raja Zafar Iqbal, posted as Incharge, P.P Chitto Chand, P.S. Thatta, is that he alongwith his subordinate staff, Police Constables, Umeed Ali, Laal Muhammad and Darya Khan departed from the police post along with weapons and investigation bag vide roznamcha entry No.9 for routine patrolling at about 2300 hours, being in police uniforms, and using Government vehicle SPC-984 by the Driver Police Constable Shahid Hussain, we entered in the jurisdiction for patrolling after visiting different places, we reached Thatta bypass road in front of the dargah Shah Yaqeeq, we received spy information that 4 persons drug dealers on one mehran car and one 125 motorcycle standing near Shah Jahan City Faqeer Goth Road Thatta who have Ice and intoxication, on such information complainant party tried to arrange private mashir but could not arrange then reached at pointed place and saw on headlight 4 persons were standing beside them one white colour Mehran car and one 125 Motorcycle were parked, they on seeing police took out pistols and all for persons made firing upon police with intention of murder, complainant party took position made aerial firing one accused fallen by raising crises and 3 accused persons boarded on 125 motorcycle and ran away, complainant party took black shopper in police custody, saw and identified them they were everyone Wahid Maganhar, 2. Kaka Samoon, 3. Gullo Khudai, complainant party checked injured

accused who was Sajid Hussain Missan, one pistol was in his hand, the same took in police custody, checked it, which was TT 30 bore, in the magazine 3 bullets were lying, number was erased, who was received fire arm injury at right leg, blood was oozing, from his body search one sachet containing Ice was recovered, took shopper of escaped accused persons, in which sachets containing with Ice, got weight which became 272 grams, demanded license from accused who disclosed that the same is unlicensed and disclosed above same names of escaped accused persons, he has received their fire arm injury, checked place of incident and secured 4 empties of pistol and 3 empties of SMG, recovered Ice sealed separately for chemical examination, pistol and empties sealed for FSL examination, checked Mehran Car No.BFC-788, prepared such mashirnama of arrest and recovery then arrested accused and recovered property brought at P.S. and lodged FIR.

3. Learned counsel submits that the Petitioner has been falsely implicated in this case. No such incident took place at all and the recovery has been foisted upon him. the witnesses in the present case were policemen inspite of the fact that the place of incident was thickly populated area; that the alleged recovery of aforementioned substance is foisted upon the petitioner. Learned counsel lastly submits that no photo pictures were taken nor was video recorded at the time of recovery and that in the similar circumstances, the Hon'ble Supreme Court has granted bail. In support of his arguments he relied upon the case of Zahid Sarfaraz Gill v. The State (2024 SCMR 934).

4. Learned Additional Prosecutor General submits that the chemical analysis report confirms the seized substance to be narcotic (Ice), weighing 100 grams. As per the Table under Section 9(2)(4) of the Control of Narcotic Substances Act, 2024, the quantity falls within the category, attracting a imprisonment which may extend to seven years but shall not be less than fourteen months along-with fine which may be up to sixty thousand rupees. He further contends that the petitioner was apprehended red-handed by the police, and the case against him stands fully established; hence, he is not entitled to the concession of bail.

5. We have heard learned counsel for the parties and have perused the record with their able assistance.

6. On perusal of material available on record, it appears that all the prosecution witnesses are police officials and no independent witness has been cited inspite of the fact that the place of incident was thickly populated area and further the complainant has not recorded the movie or captured the pictures when search, seizure and / or arrest was made as observed by Honourable Supreme Court in the case of Zahid Sarfaraz Gill v. The State (2024 SCMR 934). The Hon'ble Supreme Court in the case of Zahid Sarfaraz Gill has observed 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 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.”

7. Further the offence for which the Petitioner is allegedly involved carried punishment less than 10 years and the same does not fall within the prohibitory clause. Moreover, the Petitioner was granted bail in the main case bearing Crime No.105/2025 registered at the same Police Station under Section 324, 353 and 34 PPC by the Court of Sessions Judge Thatta vide Order dated 03.05.2025, so also in Sindh Arms Act, 2013 are being Crime No.106/2025. Copies of the bail grant orders are available at Page No.45 and 55 respectively. In view of the above, we are of the view that the petitioner has made out his case for grant of post-arrest bail. Resultantly, this petition is allowed and the petitioner is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.30,000/- (Thirty Thousand only) and PR bond in the like amount to the satisfaction of Nazir of this Court. The Petitioner shall appear before the trial on each and every date of hearing.

8. It is clarified that this order is based on a tentative assessment of the material available on record and shall not prejudice or influence the proceedings before the trial court, which shall be conducted and decided strictly on merits.

9. The instant petition stands disposed of in the above terms.

JUDGE

JUDGE

NADEEM