

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S-767 of 2025

Applicant : Abdul Razzaque son of Ali Sher, Malik
Through Mr. Rukhsar Ahmed Junejo, Advocate

The State : Through Mr. Mansoor Ahmed Shaikh,
Deputy Prosecutor General.

Date of hearing : 18.09.2025
Date of Order : 18.09.2025

ORDER

KHALID HUSSAIN SHAHANI, J.— Applicant Abdul Razzaque Malik seeks post arrest bail in a case bearing crime No.46/2025, for offence under Section 9(i), 3(C) Sindh CNS Act, 2024, registered at Police Station Bhiria Road. Prior to this, his bail plea was declined by the Court of learned Special Judge (Competent Court) Naushahro Feroze vide order dated 23.08.2025.

2. According to the FIR lodged by complainant ASI Muhammad Saffar Rajper, on 20.07.2025 he along with subordinate staff left the police station for patrol. During patrol near village Gulab Dayo they spotted a person carrying a black shopper who, upon seeing the police, allegedly tried to flee but was apprehended after a short chase. In the absence of private witnesses, police officials HC Luqman and PC Arshad Kalhorro were made mashirs. Upon inquiry the person disclosed his name as Abdul Razzaque. The black shopper was opened and allegedly contained charas weighing 2200 grams, which was sealed on the spot, and a recovery-cum-arrest memo prepared. Consequent upon such recovery, case was registered inter alia on above facts.

3. Learned counsel for the applicant has argued that the case is entirely fabricated and the applicant has been falsely implicated. He

contends that despite the recovery being affected at a public place no independent witness was associated, which constitutes a clear violation of section 103 Cr.P.C. He further submits that no video recording was prepared at the time of recovery although the Sindh CNS Act, 2024 makes such recording mandatory. It is further urged that the minimum punishment prescribed under the relevant provision is nine years, which does not attract the prohibitory clause of section 497(1) Cr.P.C, making bail a rule rather than an exception. Counsel relies upon judgments reported as 2024 SCMR 934, 2025 SCMR 721 and an unreported order in C.P. No. D-729 of 2025, wherein it was consistently held that when recoveries rest solely upon police evidence and are tainted by procedural lapses, the benefit of doubt at bail stage must go to the accused.

4. Conversely, learned Deputy Prosecutor General has opposed the bail plea by asserting that the recovery of a large quantity of charas from the possession of the applicant is a serious matter. The offence is non-bailable by statute and the recovered contraband reflects his involvement in the narcotics trade, which is to be discouraged by denial of bail.

5. After hearing both sides and examining the record, it is not disputed that 2200 grams of charas is alleged to have been recovered from the possession of the applicant. However, the manner in which the alleged recovery was made casts serious doubts at this stage. Admittedly, no video recording was made, which omission amounts to violation of mandatory provisions of the Sindh CNS Act, 2024 and undermines the prosecution's claim of fair and transparent proceedings. Likewise, the failure to associate any private mashir despite the recovery being affected at a public place runs contrary to the spirit of section 103 Cr.P.C. and reduces the evidentiary worth of the alleged recovery.

6. The quantum of punishment also bears significance. The law provides that the punishment for such offence may extend to fourteen years but shall not be less than nine years. The minimum sentence, therefore, is below the ten-year threshold envisaged by section 497(1) Cr.P.C., and thus the case does not fall within the prohibitory clause. It is a settled principle of law that where the offence does not fall within the prohibitory clause, bail is to be granted as a rule and refusal is to be an exception. The Supreme Court in Muhammad Abid Hussain v. The State* (2025 SCMR 721) held that procedural irregularities in narcotics recoveries are sufficient to create reasonable doubt justifying bail at the initial stage, while in Zahid Sarfaraz Gill v. The State (2024 SCMR 934) it was reiterated that when recovery rests exclusively on police testimony and mandatory safeguards such as video recording are ignored, bail should not be denied.

7. In view of these considerations, the applicant has successfully demonstrated a case for grant of post-arrest bail. Accordingly, this application is allowed. The applicant, Abdul Razzaque Malik, is admitted to bail on furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand) and P.R. bond in the like amount to the satisfaction of the learned trial Court.

8. The observations made herein are purely tentative and confined to the disposal of this bail application and shall not prejudice the trial Court in deciding the case on merits.

J U D G E