

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

[DIVISIONAL BENCH]

Cr. Bail Appln. No. D-101 of 2025

Before:

Mr. Justice Amjad Ali Bohio, J.

Mr. Justice Khalid Hussain Shahani, J.

Applicant : Gul Hassan s/o Bakhshal Khan, Chandio
Through Mr. Akber Ali Dahar, Advocate

The State : Through Mr. Muhammad Farooque Ali Jatoi
Special Prosecutor, ANF

Date of Hearing : 04.11.2025
Date of Order : 04.11.2025
Reasons recorded on : 05.11.2025

ORDER

KHALID HUSSAIN SHAHNI, J.— Applicant Gul Hassan, seeks post arrest bail in a case bearing crime No.01 of 2024, for offences punishable under Sections 9, 6(1) 5(a), 9 (2) 6, 14, 15 of CNS Act, 1997 registered at PS ANF Sukkur. Earlier, his bail plea was declined by the Court of learned Additional Sessions Judge-III/MCTC-II/Special Judge (CNS), Sukkur vide order dated 09.10.2025.

2. The facts leading to the arrest of the applicant as narrated in the FIR filed on 23.02.2024 are that the complainant, Sub-Inspector Abdul Rauf of Police Station ANF Sukkur, received spy information regarding smuggling of narcotic substances by Gul Hassan and another person Azam Ali through a Suzuki Mehran vehicle bearing registration number BMN-739. Upon receipt of this information, a raiding party comprising the complainant and other constables proceeded towards Shikarpur Road near HD Restaurant in Sukkur. The police party subsequently intercepted the vehicle and apprehended both accused persons. During the course of the search, narcotics totalling to 640 grams of ice and 952 grams of opium were allegedly recovered from the vehicle. The complainant appointed two police officials, namely ASI Mohammad Waleed Javed and Constable Mansheer Ahmed, as witnesses to the recovery

and search proceedings. The accused Gul Hassan was arrested and subsequently remanded in judicial custody, whereafter the present bail application was filed.

3. The principal contentions advanced by the defence include that the case against the applicant is fabricated and based upon mala fide intentions of the police authorities. It is further argued that the alleged narcotic substances were foisted upon the applicant in order to appropriate the lawful amount of money which was snatched by the police during the course of the operation. The defence has particularly emphasised that the narcotics were recovered from the vehicle and not from the physical possession of the applicant, thereby rendering the case one that requires further inquiry within the contemplation of Section 497(2) of the Code of Criminal Procedure. Moreover, the applicant's counsel has drawn the attention of this Court to the violation of Section 103 of the Code of Criminal Procedure inasmuch as no private person was cited as witness to the recovery proceedings despite the fact that the search operation was conducted during daytime when the presence of several persons could easily have been secured. The applicant has further submitted that he is a person of advanced age and is currently afflicted with medical ailments that require proper medical attention. The defence has also placed reliance on the fact that despite the directions issued by this Court in its earlier order dated 12.06.2025 to conclude the trial within a period of three months, the prosecution has failed to produce any material witnesses before the trial court, which demonstrates the weak foundation of the prosecution case and the dilatory approach of the investigation and prosecution authorities.

4. In opposition to the bail application, the learned Special Prosecutor for the ANF contended that the applicant was apprehended at the scene of occurrence in a state of possession of a substantial quantity of narcotic substances, namely 640 grams of ice and 952 grams of opium, which was immediately sealed and preserved for chemical analysis in accordance with the prescribed procedure. He further argued that the offences registered against the

applicant fall within the purview of the prohibitory clause contained in Section 51 of the Control of Narcotic Substances Act, 1997, and therefore, the applicant is not entitled to claim the discretionary grant of bail in the ordinary course. The prosecution also relied upon certain judicial precedents to argue that mere administrative directions issued by the superior courts to the trial courts for expeditious conclusion of proceedings do not automatically entitle the accused person to claim bail as a matter of right.

5. We have carefully perused the entire record and also considered the voluminous case diaries placed before it. The position which emerges from a meticulous examination of the record is that the case presents certain peculiarities and features that compel this Court to exercise its discretionary powers in favour of the applicant. The first and foremost consideration that flows from the record is the repeated and consistent failure of the prosecution authorities, despite directions from this Court, to produce any material witnesses before the trial court since the commencement of trial proceedings subsequent to the framing of charges. The record clearly demonstrates that on numerous dates of hearing spread over several months, no prosecution witnesses were produced or examined. The prosecution has sought adjournments on various dates on the pretext that it would produce the witnesses on the subsequent dates of hearing, but these promises have remained unfulfilled, thereby betraying a pattern of dilatory conduct on the part of the investigation and prosecution authorities.

6. The Supreme Court of Pakistan has in numerous judgments recognised the cardinal principle enshrined in the criminal justice system that the primary object of bail is not to remain confined in the custody of the jail but to shift the custody of the accused from the jail to the hands of a suitable surety until the conclusion of trial. This principle gains further strength from the constitutional guarantee provided under Article 10-A of the Constitution of the Islamic Republic of Pakistan, which guarantees to every person involved in any

judicial proceeding the indefeasible right to a fair trial. A fair trial by its very nature and essential character necessitates that the trial should be concluded within a reasonable period of time, for an inordinate delay in the conclusion of trial operates to the prejudice of the accused who is left languishing in custody without any conviction of guilt.

7. This Court derives considerable guidance from the principles laid down in the case of *Amir Alam and others v. The State* reported in (2024 SCMR 934), wherein the Supreme Court reiterated with considerable emphasis that the bail provisions contained in the Code of Criminal Procedure and the special enactments like the Control of Narcotic Substances Act must be read and interpreted in a manner that is consonant with the fundamental rights guaranteed by the Constitution. The Court further held that while the seriousness of the offence is indeed a relevant consideration, it cannot be the sole determining factor in the grant or refusal of bail. Instead, the totality of circumstances including the nature of evidence, the conduct of the prosecution, the progress of the trial, and the personal circumstances of the accused must all be weighed in the scales of justice. The Supreme Court in that case further emphasised that a protracted delay in the trial proceedings without any satisfactory progress in the examination of witnesses constitutes a powerful circumstance in favour of the accused and militates against the continued detention of the accused in custody.

8. Furthermore, this Court finds valuable guidance in the pronouncements made in the case reported as (2025 SCMR 721), wherein the Supreme Court has articulated with clarity that the statutory restrictions on the grant of bail in cases involving offences under special statutes like the Control of Narcotic Substances Act must be applied with due regard to the principles of proportionality, reasonableness and fairness. The Supreme Court in that judgment held that the discretionary power to grant bail under such circumstances must not be exercised in a manner that becomes tantamount to a denial of justice to an innocent person or operates to inflict disproportionate

prejudice upon the accused through incarceration prior to conviction. The Court further emphasised that where the prosecution has substantially failed to advance its case through the examination of witnesses and the presentation of substantive evidence, the continued detention of the accused can no longer be justified on the grounds of maintaining the integrity of the justice system or preventing the accused from fleeing justice.

9. The present case exhibits features that bring it squarely within the ambit of the principles laid down by the Supreme Court in the aforementioned decisions. The applicant has now been in custody for a considerable period of time since his arrest on 23.02.2024, and the trial, despite the earlier direction of this Court issued in June 2025 to conclude the same within three months, has made virtually no headway. Not a single material witness has been examined by the prosecution, thereby leaving the case in a state of complete suspension and stasis. The absence of any examination of witnesses for such an extended period raises serious questions regarding the efficacy and seriousness of the prosecution, and demonstrates that the police and prosecution authorities have not been able to muster sufficient evidence to proceed with the trial in a meaningful manner.

10. The applicant has further raised serious concerns regarding the legal compliance of the recovery proceedings with the mandatory requirements prescribed under the Code of Criminal Procedure. The failure to associate any private witness to the recovery and search operations, despite the fact that the search was conducted in broad daylight when the presence of civilians could easily have been ensured, constitutes a violation of the procedure mandated under Section 103 of the Code of Criminal Procedure. While the complainant in the FIR has attempted to justify this non-compliance by asserting that private persons were not available or refused to act as witnesses, the record does not contain any credible evidence or documentation to support such a claim. This deviation from the prescribed procedure introduces an element of doubt into the

reliability of the recovery proceedings and casts a shadow over the integrity of the chain of custody of the alleged narcotic substances.

11. Furthermore, we are constrained to note that the applicant has raised credible allegations regarding misuse of the ATM card of the co-accused, which was seized during the course of the search operation and was subsequently recorded as case property. According to the allegations, the police authorities have purportedly withdrawn substantial amounts exceeding three lac rupees from the ATM card, thereby demonstrating that the case property was not maintained in safe and secure custody and that police officials may have acted with improper motives. While this issue may be subject to further investigation and inquiry at the trial stage, it nonetheless contributes to the overall picture of irregularities and questionable conduct on the part of the police authorities. It bears repetition that the narcotics were allegedly recovered from the vehicle and not from the direct physical possession of the applicant. While the evidence of possession of the vehicle may constitute circumstantial evidence against the applicant, it is nevertheless insufficient to render the case one that is beyond the need for further inquiry. The dictates of Section 497(2) of the Code of Criminal Procedure clearly envisage that in cases where there is a reasonable doubt regarding the direct involvement of the accused in the commission of the alleged offence, the accused is entitled to claim bail pending the conclusion of the trial.

12. We are acutely conscious of the fact that offences under the Control of Narcotic Substances Act are of a serious nature and that the statute itself contains restrictive provisions regarding the grant of bail. However, as held by the Supreme Court in the cited cases, these restrictive provisions cannot be interpreted in such a manner as to result in an absolute and unconditional denial of bail in all cases. Rather, the discretionary power to grant bail must be exercised by applying the principles of proportionality, fairness and reasonableness, taking into account the entire factual matrix of the case and the nature and quality of the evidence adduced by the prosecution.

13. The failure of the prosecution to advance its case through the examination of material witnesses, the violation of procedural safeguards in the conduct of the search and recovery operations, the serious questions regarding the integrity of the investigation, and the inordinate delay in the trial proceedings despite the earlier directions of this Court, all taken together, constitute compelling circumstances that warrant the grant of bail to the applicant. Accordingly, applicant Gul Hassan Chandio is/was admitted to bail, subject to furnish already solvent surety in the sum of Rs.100,000/- (One Hundred Thousand Rupees) and personal recognizance bond in the like amount to the satisfaction of learned trial court vide short order dated: 14.11.2025 and these are the reasons thereof.

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