

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Criminal Bail application No.D-143 of 2025

Present:

**Justice Tasneem Sultana
Justice Jan Ali Junejo**

Applicant : Abdul Nabi s/o Sahib Khan Jamali through
Mr. Muhammad Hussain Khan, advocate.

Respondent : The State, through Mr. Shahriyar Shar,
Special Prosecutor, ANF.

Date of hearing : 07.01.2026
Date of order : 07.01.2026

ORDER

TASNEEM SULTANA, J.- Through this bail application, the applicant Abdul Nabi seeks post arrest bail in Crime No.16 of 2025, under Sections 6, 9 (1) 3 (c) The Control of Narcotic Substances Act, 1997(CNSA), registered at PS ANF, Hyderabad, after his post arrest bail application was declined by the learned Additional Sessions Judge-I/Special Judge CNS, Hyderabad, vide order dated 13.09.2025.

2. Brief facts of the case are that on 09.04.2025, upon receipt of spy information, a police party of PS ANF, headed by SI Muhammad Siddique, conducted a raid near Shell Petrol Pump Gidu Chowk, Hyderabad. During the said raid, the accused Abdul Nabi was apprehended while riding an Express motorcycle bearing Registration No. HEG-1064. Upon search of a black plastic shopper allegedly carried by him, four kilograms of Charas were recovered. Due to non-availability of private mashirs, police officials PC Manzoor Hussain and PC Muneer Ahmed were shown as mashirs; for that he was booked in the aforementioned FIR.

3. At the very outset learned counsel for the applicant does not press medical ground and wants to argue the matter on merits. He contends that applicant/accused has been falsely implicated, and the alleged recovered substance has been foisted upon him; that the police party (ANF) raided the house of the applicant/accused and illegally and unlawfully took him into custody,

and thereafter falsely implicated him in the present case; that the complainant failed to mention his departure and arrival entries from the police station, which omission renders the prosecution case doubtful and dramatized; that no cash or incriminating article was recovered from the exclusive possession of the applicant/accused, which makes the case one of further inquiry; that all cited witnesses are police officials, and the case is entirely based upon a managed and interested version. In support of his contentions he has relied upon 2025 SCMR 721 (*Muhammad Abid Hussain versus The State and another*) and 2024 SCMR 934 (*Zahid Sarfaraz Gill versus The State*).

4. Conversely learned Special Prosecutor ANF opposed the instant bail application and contends that applicant/accused is nominated in FIR and 04 KG of Charas has been recovered from his exclusive possession; that no malafide on the part of ANF police for false implication of applicant/ accused has been established; that PWs have supported the version of the prosecution; that the FIR has been registered promptly; that prior to the present bail application, the applicant had filed Criminal Bail Application No. S-712/2025, which was not pressed by his counsel on 22.08.2025, and no fresh ground has been agitated in the present bail application; therefore, the present bail application is not maintainable and is liable to be dismissed.

5. Heard and record perused.

6. It is important to note here that this is second bail application on part of the applicant/accused in Crime No.16 of 2025 as earlier his first Bail Application bearing No.S-712 of 2025 in the same crime had been dismissed as withdrawn by this Court vide Order dated 22.08.2025.

7. The first and foremost question before this Court is as to whether a second bail application in the same crime before the same Court without having any new and/or fresh ground is maintainable or otherwise.

8. In order to answer the aforesaid question I have taken guidance from the case of *Nazir Ahmed and another vs. The State and others reported in PLD 2014 SC 241*, wherein it has been settled by the Apex Court as follows:

“(iii) Dismissal of an application for bail after attending to the merits of the case amounted to rejection of all the grounds available or in existence till the time of such dismissal whether such grounds were actually taken or urged or not Crl.Misc.No.82227-B of 2022. 3 and whether such grounds were expressly dealt with in the order of dismissal or not.

(iv) In case of dismissal of an earlier application for bail on the merits of the case a subsequent application for the same relief could be filed and entertained only if it was based upon a fresh

ground, i.e. a ground which was not available or in existence at the time of decision of the earlier application.

(v) Withdrawal simpliciter of an earlier application for bail before addressing or hearing of any argument on the merits of the case does not preclude filing of a subsequent application for the same relief before the same court and its decision by such court on the merits of the case. In all cases of withdrawal of such an application the court must faithfully record in its order as to whether withdrawal of the application had been requested and allowed after addressing and hearing of some or all the arguments on the merits of the case or withdrawal of the application had been requested and allowed before addressing and hearing of any argument on the merits of the case.

(vi) In a case of withdrawal of an earlier application for bail after addressing and hearing of some or all the arguments on the merits of the case no subsequent application for the same relief could be filed before or entertained by the same court unless such subsequent application was based upon a fresh ground, i.e. a ground which was not available or in existence at the time of disposition of the earlier application.”

9. The dicta reproduced above was subsequently endorsed by a five member Bench of the Apex Court in the case of *Muhammad Aslam vs. The State reported in PLD 2015 SC 41*. These settled principles make it clear that second bail application on similar grounds before same Court cannot be entertained even if the first one was withdrawn after making arguments at some length. I have gone through the earlier bail application of the applicant in juxtaposition of the grounds taken in one of the present bail application, it appears that both these bail application are based on same grounds. The earlier bail application, as mentioned supra, was withdrawn by the counsel for the applicant after making arguments at some length. Therefore, in view of the above dicta it can be easily held that all the grounds, taken in present bail application, were considered and rejected by this Court earlier.

10. Even coming to the merits of the case, it reflects from the record that the applicant/accused was apprehended at the spot and 04 KG Charas was recovered from his personal possession. The alleged offence falls under Section 9(1) (3) (c) of the CNSA, 1997, which is punishable with imprisonment that may extend to 14 years but shall not be less than 9 years, along with a fine up to four hundred thousand rupees, but not less than eighty thousand rupees. In the case of *Jabran and another versus The State through Director General FIA and others (2025 SCMR 1099)* Hon'ble Supreme Court of Pakistan has discussed the question of imposition of maximum sentence. The relevant portion is reproduced as under:-

“6. We have gone through the referred judgments and have not been persuaded by the argument of the learned counsel that the minimum period of sentence is to be considered at bail stage for

the purpose of section 497(1) Cr.P.C. Such interpretation is not supported by any law or subsequent jurisprudence established by this Court. At bail stage, the Court is not to undertake any speculative exercise or guess work regarding the probable length of sentence that will likely be awarded at the end of a trial. Doing so would amount to a deeper appreciation of evidence, which is prohibited at bail stage. Additionally, any such attempted categorization of sentencing or speculation at bail stage could prejudice future proceedings by pre-empting the mind of the Trial Court."

In recent judgment in *Barkat Ullah versus The State and another, CrI. Misc. No. 431-B/2024* it is held by Larger Bench of Islamabad High Court that:-

"(a) The expression "punishable" used in section 497(1) Cr.P.C. refers to the maximum punishment provided for an offence. Thus if an offence is punishable by ten years or more, then subject to other legal grounds, the same would attract statutory prohibition contained in section 497(1) Cr. P.C. and

(b) It is held that if provision of the Act of 1997 provides for maximum punishment of ten years and more, it shall attract the prohibitory clause of section 497(1), Cr.P.C. The applicability of the term "borderline case" developed in the context of erstwhile provisions of the Act of 1997 i.e. section 9(c), would amount to anticipating possible period of conviction at bail stage, which exercise is not permissible while making tentative assessment of a criminal case."

In another case of *Muhammad Aslam versus The State (2023 SCMR 2056)* Hon'ble Supreme Court of Pakistan has observed as under:-

"The offence is heinous in nature as it contributes to the menace of drugs having grave repercussions on the society. Prima facie the material available on the record connects the petitioner with the commission of the crime. The offence falls within the prohibitory clause of section 497, Cr.P.C. The impugned order is well reasoned, proceeds on correct principles of law on the subject and does not call for interference by this Court."

11. The said offence, therefore, falls within the ambit of prohibitory clause of Section 497 CrPC read with bar contained in Section 51 of CNSA, 1997. Therefore, there is prima face sufficient material on the record to believe involvement of the applicant/accused in the alleged offence.

12. It is a well-settled principle of law that deeper appreciation of evidence is not warranted at the bail stage, and determining the merits of the case at this point would be inappropriate.

13. In view of the red-handed arrest of the applicant along with a substantial quantity of charas, duly confirmed through a positive forensic report, his case squarely falls within the prohibitory clause contemplated under section 497(i), Cr.P.C. Prima facie, sufficient incriminating material is available on record connecting him with the commission of the offence; therefore, no case for grant

of bail is made out. Consequently, this bail application was dismissed vide our short order dated 07.01.2026, and these are the reasons in support thereof.

14. Needless to observe, the trial Court shall proceed independently on the basis of evidence adduced before it, uninfluenced by the observations made hereinabove.

JUDGE

JUDGE

Irfan Ali