

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. D-91 of 2025

BEFORE:

Mr. Justice Amjad Ali Bohio, J.

Mr. Justice Khalid Hussain Shahani, J.

Applicant : Mansoor s/o Ghulam Qadir, Kalhoro
Through Mr. Abdul Baqi Jan Kakar, Advocate

The State : Through Mr. Aftab Ahmed Shar, Addl. P.G

Date of hearing : 02.12.2025

Date of Short order : 02.12.2025

Reasons recorded on : 04.12.2025

O R D E R

KHALID HUSSAIN SHAHANI, J.— By a short order announced earlier, this Court allowed the instant criminal bail application filed by applicant Mansoor in a case bearing crime No.16 of 2023, for offences under sections 6 and 9(1) (3) (d) of the Control of Narcotic Substances Act, 1997, registered at Police Station ANF, Sukkur and admitted him to post-arrest bail; the following are the reasons for that order.

2. As per prosecution theory, on 25.09.2023 at about 0045 hours, Inspector/SHO Haider Ali of ANF Sukkur received spy information that a notorious narcotics peddler, Mukhtiar Mirani of Rohri, would transport a huge quantity of contraband through his worker Mansoor in Suzuki Alto car No.BUS-357 towards Sukkur city *via* Shikarpur Road, with the contraband concealed in the vehicle. Acting on such information, a raiding party comprising the complainant, ASI Waleed Javed, HC Zafar Iqbal, PC Mohsin, PC Tariq and driver HC Shafiq, along with the informer and duly armed, left the police station at about 0100 hours through roznamcha entry No.07, proceeded to Shikarpur—Sukkur Road and, near Sajjad Restaurant, started snap-checking at about 0115 hours. At about 0145 hours, an Alto car bearing registration No.BUS-357, silver colour, allegedly coming from Shikarpur side towards Sukkur, was pointed out by the informer as the target vehicle, stopped and parked at the service road; the

driver disclosed his identity as Mansoor s/o Ghulam Qadir by caste Kalhoro, resident of Drib Mohalla Shahdadkot, District Qambar-Shahdadkot. On being questioned, he allegedly confessed that four packets of charas were lying under his driving seat and three packets under the front passenger seat, which he himself produced from the said cavities; the packets, on checking and weighing, were found to contain charas, each packet weighing one kilogram, total seven kilograms; from each kilogram packet 10 grams were separated as samples for the Chemical Examiner, placed in separate envelopes and sealed as parcel No.1, while the remaining bulk was sealed as parcel No.2 with seal "H.L.". The accused was arrested on the spot; from his personal search, Rs.2250/-, his CNIC, driving licence, a mobile phone and the car were secured under mashirnama in the presence of ASI Waleed Javed and HC Zafar Iqbal, who were associated as mashirs when, according to the complainant, no passer-by agreed to act as private witness. Samples were later sent to the Chemical Laboratory, where the report came back positive for charas; after usual investigation, a complete challan was submitted before the Special Judge CNS, Sukkur, and the case was registered as Special Case No.215 of 2023.

3. The record further reflects that the applicant's first post-arrest bail application was dismissed by the learned trial Court on 12.12.2023 and that his subsequent bail application bearing No. S-60 of 2024 was dismissed by this Court on 19.03.2024 on merits, but with a specific direction to the trial Court to conclude the trial within three months and to adopt coercive process for securing attendance of prosecution witnesses. Thereafter, the applicant again approached the trial Court on hardship grounds; that bail was declined through order dated 23.05.2025, wherein the learned Special Judge CNS observed that delay in conclusion of the trial did not, by itself, confer a right to bail in view of the gravity of the offence and the quantity recovered, and relied, *inter alia*, on PLD 2019 SC 112 and *Socha Gul v. The State* (2015 SCMR 1077) in support of a strict approach under section 51 of the CNSA, 1997.

4. Learned counsel for the applicant submitted that, for purposes of the present second bail application, the challenge is not directed to the earlier concurrent findings on tentative merits, but is confined to hardship and inordinate delay not attributable to the applicant. He argued that the applicant has been continuously in judicial custody since his arrest on 25.09.2023 and has, by now, spent more than one year and eight months behind bars, yet the prosecution has miserably failed to conclude the trial despite clear and peremptory directions of this Court to do so within three months. Learned counsel referred to the order dated 19.03.2024 passed by this Court in Cr.B.A. No.S-60 of 2024, pointing out that the trial Court was not only directed to conclude the trial within three months but was also empowered to adopt coercive measures against the witnesses; however, after the lapse of the stipulated period, only partial examination-in-chief of the complainant and examination of one mashir, PC Mansheer Ahmed, had been recorded, while cross-examination of the complainant and further cross of PW-2 were repeatedly deferred without any fault of the defence. He invited attention to the order sheets and progress reports on the trial Court's file, which show that on several dates either the case property was not produced or the complainant and other PWs remained absent, prompting the trial Court to write letters to the Deputy Director (Operations), Regional Directorate ANF Karachi, for ensuring their attendance, yet without meaningful result. It was urged that, on the contrary, the defence consistently remained ready to proceed and never sought adjournment; indeed, even when the complainant did attend, adjournments were mostly at the instance of the prosecution side. Learned counsel thus submitted that the entire delay is squarely attributable to the prosecution and its officials and not to the applicant or his counsel, thereby bringing the case within the ambit of hardship and the third proviso to section 497(1) Cr.P.C, as interpreted by the superior courts.

5. On the legal side, learned counsel argued that the right to expeditious and fair trial is a fundamental right guaranteed by Article 10-A of the Constitution and that incarceration, even in narcotics cases, cannot be allowed to continue indefinitely when the State itself is responsible for non-production of witnesses and non-conclusion of the trial. He placed strong reliance on *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934), wherein, according to him, the Hon'ble Supreme Court held that, notwithstanding the gravity of narcotics offences, bail can and should be granted when the prosecution case is marred by serious procedural lapses, absence of independent witnesses and infirmities in the chain of custody, rendering the matter one of further inquiry under section 497(2) Cr.P.C. He submitted that in the present case also there is no independent mashir of recovery; the entire alleged recovery and sealing process rests on official witnesses; the chain of custody of samples was seriously questioned during the cross-examination of PW-2 Mansheer Ahmed (parcel-carrier), in whose testimony material contradictions and omissions regarding road certificate, timing and handing-over of sealed parcels surfaced, all of which, in light of *Zahid Sarfaraz Gill*, further weaken the prosecution's position at the bail stage. Learned counsel further relied on *Muhammad Abid Hussain v. The State* (2025 SCMR 721), submitting that the Supreme Court, in another narcotics matter, granted bail where mandatory safeguards concerning search, seizure, safe custody and transmission of narcotics and samples were not strictly followed, holding that such lapses struck at the root of the prosecution case and brought it within the purview of further inquiry, even where the quantity purportedly fell within the prohibitory clause. He contended that section 51 of the CNSA, 1997, though cautioning courts in narcotics matters, does not create an absolute bar against bail and must be applied consistently with the constitutional guarantee of due process and expeditious trial; thus, the precedents in *Socha Gul* (2015 SCMR 1077) do not derogate from the more recent line of authorities recognising that harshness

of sentence alone cannot justify indefinite pre-trial detention in the face of prosecution-driven delay and procedural infirmities. Finally, he submitted that the applicant has no previous criminal record, is neither a hardened nor a dangerous criminal, and that none of the statutory exceptions recognised in the third and fourth provisos to section 497(1) Cr.P.C. is attracted, therefore he is *prima facie* entitled to bail on hardship as well as on the touchstone of further inquiry.

6. Conversely, Mr. Shar learned Additional Prosecutor General for the State, assisted by the Special Prosecutor ANF, opposed the application. He reiterated that the applicant was apprehended on the spot while driving the Suzuki Alto car in question and that seven kilograms of charas were recovered from the cavities beneath the driver's and front seats of that vehicle, concealed in a manner consistent with transportation for sale; he submitted that such a huge quantity clearly brings the case within the prohibitory clause of section 497 Cr.P.C and that, after the 2022 amendment, the punishment provided for the offence under section 9(c) of the CNSA may extend to fourteen years. He stressed that the Chemical Examiner's report is positive; the seal, according to him, remained intact; and there is no allegation of previous enmity or *mala fide* on the part of ANF officials that could justify a presumption of foisting. The learned APG placed reliance on *Socha Gul v. The State* (2015 SCMR 1077), submitting that the Supreme Court has consistently treated narcotics offences as heinous crimes against society at large and has directed the courts to exercise utmost caution and circumspection while enlarging accused on bail in such matters. He also referred to (PLD 2019 SC 112) to contend that mere non-compliance with a time-bound direction of the superior courts to conclude the trial does not, by itself, entitle an accused to bail as of right, particularly where the offence is of a serious nature and carries a severe sentence. In his view, the delay, though regrettable, was partly the result of systemic and administrative issues, including transfers of

officers and workload, and could not be laid entirely at the door of the prosecution; he urged that the applicant should not be granted bail solely on this account. The learned APG maintained that there is *prima facie* sufficient incriminating material to connect the applicant with the commission of the offence, including his presence in the vehicle, alleged admission at the spot, recovery of narcotics from his car and the positive chemical report, and therefore the case does not fall within the purview of further inquiry.

7. Having heard both sides and examined the record, we have carefully considered the rival contentions. The factual matrix regarding the alleged recovery of seven kilograms of charas from the vehicle driven by the applicant and the positive chemical report is not being conclusively adjudicated at this stage, as that shall be the domain of the trial court after recording of full evidence; however, for the purpose of the present application, what assumes central importance is the progress of the trial and the attribution of delay. The order of this Court dated 19.03.2024 in Cr.B.A. No.S-60 of 2024 clearly directed the trial court to conclude the trial within three months and authoritatively empowered it to use coercive process for securing presence of witnesses, recognising the need for expedition in a case where the accused was in custody. Yet, as borne out from the later orders and the impugned order dated 23.05.2025, only limited evidence has been recorded including examination-in-chief of the complainant Inspector Haider Ali is incomplete, while that of PW-2 Mansheer Ahmed was recorded but his further cross-examination by the counsel for the co-accused was deferred, and no other material PWs have been examined.

8. The trial court itself has noted, in the impugned order and in its correspondence with this Court, that despite issuance of repeated summons, warrants and even letters to the Deputy Director (Operations) ANF Karachi, the complainant and other witnesses remained absent on multiple dates, thereby stalling the trial; there is no indication on record that the defence sought

adjournments or otherwise contributed to this delay. In such circumstances, the ratio of the Supreme Court's jurisprudence on hardship and statutory delay becomes directly applicable. In *Muhammad Usman v. The State* and other cases, the Supreme Court has held that once the time fixed by law or by a superior court for conclusion of the trial has lapsed, and the delay is not attributable to the accused, the latter acquires a right to be considered for bail under the third proviso to section 497(1) Cr.P.C., subject only to narrow exceptions, such as cases involving dangerous or hardened criminals or where the delay is traceable to the defence. No material has been brought before this Court to show that the applicant falls within those exceptions; he appears to be a first offender with no recorded past convictions, and the State has not pointed to any deliberate tactics on his part to obstruct the trial.

9. Furthermore, while section 51 of the CNSA, 1997 and precedents like *Socha Gul* urge caution in the grant of bail in narcotics cases, the Supreme Court in more recent authorities such as *Zahid Sarfaraz Gill* (2024 SCMR 934) and *Muhammad Abid Hussain* (2025 SCMR 721) has underscored that this caution cannot override the foundational requirements of due process, reliable evidence and timely trial. In *Zahid Sarfaraz Gill*, serious doubts stemming from procedural shortcomings and lack of independent corroboration were held sufficient to treat the case as one of further inquiry, justifying bail despite the quantity involved; similarly, in *Muhammad Abid Hussain*, non-observance of mandatory safeguards in handling narcotics and samples led to the grant of bail, as the integrity of the alleged recovery was compromised. In the present case, although the merits of the alleged recovery will ultimately be assessed at trial, the absence of independent witnesses, the exclusive reliance on official mashirs and the issues highlighted in the cross-examination of the parcel-carrier PW further reinforce the conclusion that the matter is at least open to further inquiry within the meaning of section 497(2) Cr.P.C, particularly when viewed in conjunction with the prolonged, prosecution-driven delay.

10. The contention of the learned Additional PG that mere lapse of a court-fixed period does not automatically entitle an accused to bail is well-founded in the abstract, as recognised in PLD 2019 SC 112; however, that principle does not detract from the settled position that where delay is both inordinate and clearly attributable to the prosecution, and where the accused has remained in continuous custody for a substantial period, the courts must lean in favour of liberty, lest pre-trial detention becomes a substitute for punishment. Here, the applicant has already undergone more than one year and eight months of incarceration without the prosecution bringing its own witnesses to the stand despite this Court's explicit directions; to keep him detained for an open-ended period in such circumstances would offend not only the spirit of section 497 Cr.P.C. but also the constitutional guarantee under Article 10-A.

11. In view of the above discussion, we are of the considered opinion that, notwithstanding the seriousness of the charge and the quantity of narcotics alleged, the case of the applicant has, at this stage, assumed the character of one of further inquiry coupled with clear hardship on account of unjustified, prosecution-caused delay in conclusion of the trial. Accordingly, by short order dated 02.12.2025, the applicant/accused Mansoor was admitted to post-arrest bail, subject to his furnishing solvent surety in the sum of Rs.200,000/ (two hundred thousand only) and a personal recognizance bond in the like amount to the satisfaction of the learned trial Court; and these are the reasons for that order.

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