

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Bail Application No.D-149 of 2025

Present:

Justice Muhammad Faisal Kamal Alam

Justice Tasneem Sultana

Applicant : Shamsullah Pathan, through Mr. Qurban Ali Malano, Advocate.

The State : Through Mr. Aijaz Ahmed Bhatti, Special Prosecutor ANF, Sukkur.

Date of Hearing : **18-08-2026**

Date of Order : **01-09-2026**

O R D E R

TASNEEM SULTANA, J.- Through this criminal bail application, the applicant, Shamsullah S/o Mehboob Khan Pathan, seeks post-arrest bail in Crime No.19 of 2025, registered under Sections 6/9(1)(3)(e), 14 and 15 of Control of Narcotic Substances Act, 1997 (CNSA) (Amended Act, 2022) at Police Station, ANF Sukkur, after his post-arrest bail application was declined by the learned Additional Sessions Judge-II/Special Judge CNS, Sukkur, vide order dated 17.10.2025.

2. The detailed facts of the case are already set out in the bail application and the FIR and, therefore, need not be reproduced here.

3. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated in the present case; that the alleged recovery has been foisted upon him; that no private mashir was associated despite the alleged recovery having been effected at a public place; that no video recording or photographs of the alleged recovery proceedings were secured; and that co-accused Mst. Fouzia and Mst. Sonia have already been granted bail by the learned trial Court vide order dated 17.10.2025. He, therefore, argued that on the rule of consistency, the applicant is also entitled to the concession of bail. He lastly prayed for grant of bail to the applicant. In support of his contentions, learned counsel relied upon the case reported as Muhammad Abid Hussain versus The State and another (2025 SCMR 721).

4. Conversely, learned Special Prosecutor ANF opposed the instant bail application by contending that the applicant is specifically nominated in the FIR and was apprehended at the spot while driving the vehicle; that a huge quantity of narcotic substance was recovered from the doors of the said vehicle; and that sufficient material is available on record connecting the applicant with the alleged offence. He, therefore, prayed for dismissal of the bail application.

5. Heard and record perused.

6. Perusal of the record reflects that the applicant was allegedly apprehended by the ANF officials on the basis of spy information while driving Toyota Vitz Car No.BYA-154. Upon search of the vehicle, 28 packets of charas, weighing 34.500 kilograms in all, were allegedly recovered from its doors. The prosecution record further reflects that 10 grams from each packet were separated for chemical examination. The Chemical Examiner's report records receipt of 28 envelopes containing samples having a net weight of 280 grams, with the seal found satisfactory, and confirms the substance sent for analysis to be charas.

7. The alleged recovery of 34.500 kilograms of charas falls within Section 9(1), Serial No.3(e), of the Control of Narcotic Substances Act, 1997, as amended in 2022, which provides punishment that may extend to imprisonment for life but shall not be less than twenty years, along with the prescribed fine. The offence, therefore, falls within the prohibitory clause of Section 497, Cr.P.C. In the case of Noor Khan v. The State (2021 SCMR 1212), it was held by the Honourable Apex Court that:

“Red-handed with seizure of considerable quantity of the contraband squarely brings petitioner’s case within the remit of Prohibition, contemplated by section 51 of the Control of Narcotic Substances Act, 1997; his claim of false implication is an issue that cannot be attended without going beyond the barriers of tentative assessment, an exercise prohibited by law”

Reference may also be made to another case of Dolat Khan v. The State and others (2016 SCMR 1447), wherein it was held by the Apex Court that:

“The petitioner was apprehended at the spot by the raiding party and as per the FIR he himself handed over two Nos. packets containing Charas and opium to the complainant (SI). Learned counsel for the petitioner has not been able to refer to anything from the record which could suggest that

the complainant or any other member of the raiding party had any animus against the petitioner. The case of the petitioner falls within the prohibitory clause of section 497 of the Code of Criminal Procedure. In this view of the matter coupled with the fact that huge quantity of narcotics has been recovered from his possession, petitioner is not entitled for the concession of bail”

8. So far as the contention regarding non-association of a private mashir is concerned, Section 25 of the Control of Narcotic Substances Act, 1997 expressly excludes the application of Section 103, Cr.P.C. Reference may be made to Muhammad Sarfaraz v. The State and others (2017 SCMR 1874). Moreover, the FIR reflects that persons available at the spot were asked to act as witnesses but declined, whereafter officials of the raiding party were associated as mashirs. Therefore, mere non-association of a private mashir, in the circumstances of the present case, does not materially advance the case of applicant.

9. As regards the absence of video recording or photographs, learned counsel has relied upon the case of Muhammad Abid Hussain (supra). The effect of such omission has to be considered in the context of the facts and circumstances of each case. In the present case, the applicant was allegedly apprehended while driving the vehicle carrying a substantial quantity of charas, whereas the samples sent for chemical examination were found with satisfactory seal and tested positive for charas. In these circumstances, the absence of video recording or photographs, by itself, does not furnish sufficient ground for further inquiry at this stage, though its evidentiary effect may be considered by the learned trial Court while appraising the evidence.

10. The plea of consistency also does not assist the applicant. Co-accused Mst. Fouzia and Mst. Sonia were passengers in the vehicle, and the learned trial Court found no material showing that they were in control thereof or had conscious knowledge of the contraband concealed therein. The present applicant, however, was allegedly driving the vehicle and, therefore, his case does not stand on the same footing as that of the said co-accused. The rule of consistency is, consequently, not attracted.

11. In view of the above facts and circumstances, the applicant has failed to make out a case for grant of post-arrest bail. Consequently, this Criminal Bail Application is **dismissed**.

12. Needless to observe that the observations made hereinabove are tentative in nature and shall not prejudice the case of either party at trial.

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