IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Crl. Bail Application No.S-1091 of 2025

Applicant:	Nasarullah alias Shakarullah son of Rehmatullah Brohi, through Mr. Shabeer Hussain Memon, Advocate
For the State:	Ms. Sana Memon, A.P.G.
Date of hearing:	25-09-2025
Date of Order:	25-09-2025

O R D E R

Jan Ali Junejo, J. – The applicant, Nasarullah alias Shakarullah, seeks post-arrest bail under Section 497, Cr.P.C. in Crime No.341 of 2025, registered at Police Station Kotri District Jamshoro, for offences punishable under Sections 9(2)-3 of Sindh CNS Act, 2024. It is pertinent to mention that the applicant's earlier bail plea was dismissed by the learned Additional Sessions Judge-I, Kotri vide order dated 23.08.2025. The present application has been filed as a continuation of the applicants' right to seek bail before this Court.

2. The prosecution case, as set out in the FIR, is that on 21.07.2025 at 0130 hours complainant ASI Sikandar Ali Panhwer In-Charge PPC Khanpur P.S. Kotri registered present FIR for the incident allegedly taken place on 21.07.2025 at 0020 hours, stating therein that he was posted as ASI In-Charge at PP Khanpur. On 20.7.2025 he along with subordinates every one HC-34 Ayaz Ali Khaskheli, PC-1092 Waseem Ahmed Abro, driver PC-989 Shamsuddin duly armed with official arms and ammunition and investigation bag left police station in official vehicle No.SPE-845 left police station Kotri vide Roznamcha Entry No.30 dated 20.7.2025 at 2300 hours for patrolling within the jurisdiction. During patrolling at Latif Road, Allah Bun chowk, Qalandar CNG reached at station road near Railway crossing bridge, they saw in the head light of vehicle that one person is coming by foot from front side,

who being suspected was tactfully apprehended at 0020 hours after stopping the vehicle. During his personal search, name, parentage and address were asked to which he disclosed his name Nasrullah alias Shakrullah s/o Rehmatullah by caste Brohi resident of Brohi Paro near Marvi Cinema Kotri. During his personal from the right side pocket of his Qameez intoxicant Ice in white colour and in cash one currency note of Rs.50/- and four currency note of Rs.100/- totally Rs.450 was secured. At that time immediately Video was recorded through PC Waseem Ahmed and HC Ayaz Ali Khaskheli had caught hold the accused. Since private mashirs were not available as such HC Ayaz Ali Khaskheli and HC Waseem Ahmed were nominated as mashirs. The recovered Ice was weighed which become 65 grams which all was sealed for chemical analyses and such memo of arrest and recovery was prepared in torch light in presence of above named mashirs. Thereafter all the Ice and accused were brought at police station in safe custody, where FIR was lodged under Section 9(2)-3 Sindh CNS Act 2024 hence, this bail application.

3. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated due to police enmity. He further contented that the alleged recovery is of a small quantity which does not fall within the ambit of commercial quantity. It is argued that the maximum punishment provided for such quantity is up to two years, hence the case attracts the principle of further inquiry under Section 497(2) Cr.P.C. Counsel further submitted that applicant has remained behind bars since his arrest, investigation is complete, challan has been submitted, and his further detention would not serve any useful purpose as trial is not likely to conclude in the near future**.** He argued that no private mashirs were associated during the recovery proceedings despite the alleged incident having occurred in a public place, which casts doubt on the veracity of the case. It was further argued that the FIR does not mention the source of procurement or any purchaser of the alleged contraband, making the prosecution story improbable.

He further submitted that there is no apprehension of abscondence, tampering with evidence, or repetition of the alleged offence, thereby entitling the applicant to bail as a matter of rule while refusal is an exception. Lastly, the learned counsel prayed for grant of bail.

4. Conversely, learned A.P.G., assisted by the investigating officer, opposed the bail plea on the ground that Ice is a health-hazardous substance was recovered from the possession of the applicant, which by itself is sufficient to connect him with the commission of offence. It was submitted that no mala fide or enmity has been alleged or established against the police to justify false implication or foisting of such a large quantity of contraband. It was thus contended that sufficient prima facie material exists on record, and the applicant does not deserve the concession of bail at this stage. At this juncture learned A.P.G on a query of the Court has not been able to satisfactorily explain as to why, despite the small quantity, the case should not be considered one of further inquiry.

5. I have carefully considered the submissions advanced by learned counsel for the applicant as well as the learned Additional Prosector General for the State and have undertaken a tentative appraisal of the material available on record, as is permissible at the bail stage. Per record the alleged recovery is of 65 grams of Ice which, by all accounts, falls within the category of small quantity. The Hon'ble Supreme Court in Muhammad Tanveer vs. State (PLD 2017 SC 733) and in Tariq Bashir vs. State (PLD 1995 SC 34) has held that the mere weight of narcotics is not sufficient to deny bail unless there are other strong incriminating circumstances. Furthermore, the Apex Court has recently reiterated that prosecution must furnish clear and cogent evidence before seeking denial of bail). In such view of the matter, particularly that the alleged recovery of 65 grams of Ice is of small quantity, punishable up to two years only, the case squarely attracts the principle of further inquiry under Section 497(2) Cr.P.C. considering also that the trial is not likely to conclude

in the near future. Furthermore, perusal of the record demonstrates that no private mashir was associated during the alleged recovery proceedings despite the incident having purportedly occurred in a public place where independent witnesses could have easily been procured which cannot be ruled out. It is noteworthy that the Hon'ble Supreme Court in Zahid Sarfaraz Gill v. The State (2024 SCMR 934) has recently emphasized the evidentiary importance of proper handling of narcotics seizures — inter alia directing that **searches**, **seizures** and **arrests** should, wherever feasible, be recorded/photographed and independent witnesses be associated so as to obviate false implications and protect the integrity of the prosecution case. The Apex Court further observed that absence of such contemporaneous recording and lack of **independent witnesses** substantially weakens the prosecution's version and is a factor which the court must take into account while disposing of bail applications in narcotics cases. In the circumstances of the present case, where (i) recovery is of a small quantity, and (ii) no independent witness was associated and there is nothing on record to show proper contemporaneous recording of search/seizure, the observations in Zahid Sarfaraz Gill weigh in favour of the applicant. While police officials are not legally disqualified from acting as witnesses, the absence of independent corroboration, particularly in cases involving alleged recovery of contraband, calls for careful judicial scrutiny at the bail stage. The settled principle, as consistently reiterated by the Honourable Supreme Court of Pakistan, is that in cases not falling within the prohibitory clause, the grant of bail is to be treated as a rule, while refusal is an exception. This exception can only be invoked in the presence of extraordinary circumstances such as a likelihood of abscondence, the possibility of tampering with prosecution evidence, or a reasonable apprehension of repetition of the offence. No such circumstances have been demonstrated or substantiated in the present case. The Honourable Supreme Court of Pakistan in case of ***Muhammad Amjad Naeem v. The State through***

Prosecutor General Punjab and another (2025 SCMR 1130) reaffirmed this principle by observing that: *"The principle that bail should be granted as a rule and withheld only in exceptional circumstances, particularly in cases involving non-bailable offences, not falling within the prohibitory clause of section 497(1) Cr.P.C., has been developed and applied in numerous judgments of this Court"*. Moreover, there is nothing on record to suggest that the applicant has any previous conviction or that he is habitual offenders. Likewise, no material has been presented to indicate that he is likely to abscond or misuse the concession of bail if granted at this stage. It is also a settled principle of law that mere registration of a case, without concrete evidence of flight risk or prior criminal conduct, is insufficient to deprive an accused of the benefit of bail, particularly when the alleged offence does not fall within the prohibitory clause. The case has finally been challaned and there is no apprehension of tempering with the evidence on the part of applicant as all the witnesses are police officials and the applicant is in custody for about more than two months without effective trial. In these circumstances, the applicants have successfully made out a case for grant of bail.

6. In view of the foregoing, the applicant Nasarullah alias Shakarullah admitted to post-arrest bail subject to furnishing solvent surety in the sum of Rs.100,000/- and a P.R. bond in the like amount to the satisfaction of the learned trial Court and these are the reasons of my short Order dated 25.09.2025.

7. It is clarified that any observation made herein is of tentative nature and shall not prejudice the case of either party during the trial. If the applicants misuse the concession of bail or attempt to tamper with prosecution evidence, the trial Court shall be at liberty to take appropriate action in accordance with law.

JUDGE

Ahmed/Pa,