

# IN THE HIGH COURT OF SINDH, KARACHI

C.P NO.D-2167 OF 2025

(Khadim Hussain Versus Province of Sindh and others)

***Before:-***

**Mr. Justice Zulfiqar Ali Sangi**

**Mr. Justice Nisar Ahmed Bhanbhro**

Petitioner:	Khadim Hussain Son of Fateh Muhammad : Mr. Muhammd Dawood Narejo, Advocate
Respondent:	The State, through Mr. Ali Haider Saleem, Addl. Prosecutor General
Date of hearing:	16.07.2025
Date of Order:	16.07.2025

## **ORDER**

**NISAR AHMED BHANBHRO J.** Through instant Constitution Petition, Petitioner seeks post arrest bail in FIR No.146 of 2025 registered for an offence punishable under Section 9(1)(3)-B Control of Narcotic Substance Act, 2024, registered at Police Station Super Market, Karachi.

2. Briefly, the facts as unfolded in the FIR are that SIP Taras Bhatti Sub Inspector Police Station Super Market, Karachi along with Police officials HC Babar Hameed, PC Muhammad Ali, PC Muhammad Javed and driver HC Arif Raza were busy in patrolling in the area in government mobile bearing No.SPE-535 vide daily dairy dated 49 kept at Police Station. During patrolling when they reached at C-area Liaquatabad, Police Party received spy information through informer that a narcotics smuggler was standing at Layari Lake near Taji Baba grave. The suspected person was in possession of huge quantity of contraband and he was waiting for purchasers. The Police party moved to the place of information, reached there at about 0530 hours and found one person standing there. The suspect was apprehended by applying professional tricks, on query he disclosed his name as Khadim Hussain son of Fateh Mohammed. Due to unavailability of the private persons, HC Babar Hameed and PC Mohammed Ali were appointed as mashirs. On personal search of the accused one plastic shopper was secured from his hand which contained one piece of the Charas. The contraband material was weighed on spot which became 540 grams. The recovered property was sealed on spot and memo of arrest and recovery was prepared at spot. The accused was arrested and brought at police station with recovered contraband. FIR on behalf of the state was recorded for offences punishable under section of 9(i)(B) Sindh Control of Narcotics Substances Act 2024(SCNS Act 2024).

3. Mr Muhammad Daud Narejo, Learned counsel for the Petitioner contended that the Petitioner is innocent and falsely implicated. Per Learned Counsel that the arrest of the Petitioner was made in violation of provisions of section 17 of the SCNS Act 2024 which obligated the raiding part for video recording of the proceedings of arrest and recovery. He contended that no prior private person was

associated with the recovery proceedings which violated requirement of section 103 CrPC. Petitioner was not a previous convict and mere involvement of petitioner in like nature cases was no ground for refusal of bail. He contended that offence alleged did not fall under the prohibitory clause of section 497 CrPC, wherein basic rule is bail but not jail. He contended that the case of the Petitioner called for further inquiry and fell within the scope of section 497(2) CrPC. He prayed for grant of bail to the Petitioner.

4. Mr Ali Haider Saleem, Learned Additional Prosecutor General contended that Petitioner was arrested on the spot and contraband material was recovered from his possession. All the witnesses have supported the prosecution case in their statements recorded under section 161 CrPC and there is no animosity of the Police Party against the Petitioner for his false involvement. He contended that Petitioner was a habitual offender and he was involved in Three other cases of similar nature. Petitioner after grant of bail in previous cases, repeated the offence, as such he is not entitled for the grant of bail. He contended that the officers of police are as good witnesses as the people from public. He contended that provisions of section 17 of the SCNS Act 2024 were not applicable to the case of Petitioner, he prayed for dismissal of the Petition.

5. We have heard learned counsel for the Petitioner and Learned Additional Prosecutor General and perused the material available on record, with their able assistance.

6. Contention of the Petitioner that Police party despite of information in advance did not associate any independent person to witness the recovery proceedings is without substance as the officers of the Police are as competent witness as independent witnesses and credibility of their evidence as at par to any other witness. The provisions of the Code of Criminal Procedure, 1898 to the extent of section 103 do not apply in the recovery proceedings related to contraband drugs. The makers of the legislation to curb narcotics spread were live to the fact that people from public hardly cooperate police in the matters involving arrest of drug peddlers for want of safety and other reasons, therefore, through section 20 of the SNCS, Act 2024 the restrictions as to the search, seizure, arrest and recovery imposed under section 103 CrPC are relaxed. The presumption that a person acts honestly applies, as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. Moreover, Learned Counsel for the Petitioner could not elicit any material to demonstrate the ill will or animosity of the police party against the petitioner that might have resulted in his false implication.

7. Adverting to the contention of Learned Counsel for the petitioner that alleged offence was not punishable for ten years or more thus fell outside the limb of prohibition contained in section 497 CrPC. Admittedly petitioner was arrested in the wee hours of night from an abandoned place and contraband material charas weighing 540 grams was recovered from his possession. Per schedule in section 9 of SCNS Act 2024, the charas weighing 540 grams was punishable for an imprisonment which may extend up to nine years but shall not be less than five years along with a fine up to Rupees One Lac but not less than Sixty Thousand. Admittedly the alleged offence did not fall within the prohibition contained under

section 497 CrPC and in such cases the general rule is bail but not the jail. This general rule regarding grant of bail in offences that do not attract the punishment falling under the definition of prohibition contained in clause (1) of section 497Cr.P.C has sought certain well established exceptions enunciated by the Honorable Apex Court viz – a - viz likelihood to abscond to escape trial; likelihood to tamper with the prosecution evidence or influence the prosecution witnesses to obstruct the course of justice; and the likelihood to repeat the offence .The case of the Petitioner falls in an exception to the general rule for grant of bail and will be examined through a different yard stick as he is involved in more than three like nature cases registered prior to present FIR. Per criminal record submitted by the investigation officer, Petitioner was involved in FIR No 90 of 2019 of Police Station Super Market, 91 of 2019 of Police Station Super Market, 337 of 2021 of Police Station Gul Bahar wherein the contraband psychotropic substance was recovered. It appeared from the record that petitioner after release on bail in the earlier FIRs repeated the offence and misused the concession of bail. The apprehension of the Learned Prosecutor for the State under the peculiar circumstances appeared to be correct that the Petitioner if released on bail would again involve himself in drug peddling. The past conduct of the Petitioner was sufficient to dub him a habitual and desperate offender; in such circumstances the concession of bail cannot be granted in run off a mill manner.

8. In the case of Muhammad Faiz alias Bhora Versus the State reported in 2015 S C M R 655 the Honorable Supreme Court of Pakistan has laid down the following principle for dealing the bail plea of habitual offender:

6. We would not like to comment upon the criminal cases registered against the petitioner, list of which has been produced before us by the learned Law Officer pertaining to different years. As per learned counsel for the petitioner, the petitioner was acquitted of the charge in these cases on the basis of compromise. We may observe that right of an accused to the concession of bail in a cognizable offence is not absolute. It is the discretion which a Court exercises by transferring the custody of an accused from Jail to the Court, which discretion is normally withheld if the accused abuses the concession by repeating the offence after the grant of bail. The criminal cases against the petitioner prior to the case in hand, prima facie, attracts the aforesaid established norms.

9. In the case of Mst. Fursan Versus the State reported in 2022 S C M R 1950 Honorable Supreme Court while declining the bail plea of the petitioner involved in a narcotics case has been pleased to observe as under:

*9. While examining the applicability of the third exception, relied upon by the learned counsel for the State, as to the likelihood of the repetition of the offence by the petitioner, we find that the offences relating to narcotic drugs are of such a nature that do indicate the likelihood of the repetition of the offence by the accused. Dealing in narcotic drugs is usually the business of the persons involved therein, and is not a spontaneous or one time act, and the women are often involved in it as carriers for the transportation, supply and sale of narcotic drugs.<sup>6</sup> The likelihood of such an offence being repeated by the petitioner cannot,*

*therefore, be ruled out. The case of the petitioner thus comes within the scope of the exception of likelihood of repeating the offence.*

10. In another case of Shoukat Ali alias Shoka Versus The State reported in 2004 S C M R 1068 Honorable Supreme Court of Pakistan, while declining the leave to appeal against the bail declining order of the Learned High Court was pleased to observe as under:

*3. We have considered the contention raised by the learned counsel for the parties and have gone through the documents appended with this petition. It is reflected from the perusal thereof that the F.I.R. was got registered on 2-1-2002 at Police Station, Niddoki, District Narowal, under sections 392, 411 and 412, P.P.C. The petitioner remained absconder and according to the learned counsel he was apprehended in March, 2003. The learned Single Judge of the Lahore High Court, Lahore, after thrashing the entire record has exercised his discretion in dismissing the plea of the petitioner. It would be appropriate to reproduce the concluding paragraph of the impugned order which is in the following terms: "Whereas; according to the learned counsel for the complainant side, the petitioner was involved in seven criminal cases including murder cases. That he was a desperate and hardened criminal and also remained fugitive in the same cases. That although he was a councilor of his Ilaqa but he depends on ransom for his living and has made the lives of many others miserable. That a recovery of cash amount has also been effected from him. Although, it is said by the learned counsel for the petitioner that the cash amount did not belong to the complainant. An affidavit has also been submitted to state that the petitioner was a desperate person. It has been further argued by the learned counsel for the complainant that a prima facie case has been made against the petitioner and that allowing him bail would mean he shall go on committing such-like offences because he was a hardened criminal."*

11. Addressing the next contention of the Learned Counsel for the Petitioner that during arrest and recovery provisions of section 17 of the SCNS Act 2024 were not followed, which vitiated all the recovery proceedings as no video recording was done. Perusal of section 17 of SCNS Act 2024 revealed that through an officer not below the rank of Inspector of Narcotics or equivalent has been authorized to conduct search of a building, place, premises or conveyance without obtaining the warrant of search, seizure and arrest from the competent Court of law, in the cases wherein it is not possible to obtain a warrant for arrest and search as the delay in conducting search and seizure may result in the escape of culprits. The Petitioner has not been arrested from any building or conveyance requiring search, therefore, filmizing of arrest and recovery through camera was not mandatorily required as such absence of video recording will not benefit the petitioner in any manner. Though Honorable Supreme Court in the case of Zahid Sarfaraz Gill reported in 2024 SCMR 934 while granting bail made an observation for video recording through built in mobile camera, but looking at the facts and circumstances of the present case and his past conduct, the Petitioner is not entitled to the benefit of observation made in Zahid Sarfaraz Gill case supra.

12. The legislature in the province of Sindh has enacted SCNS Act 2024 to deal with the criminals involved in Narcotics with iron hands. Drug menace poses a protentional threat to a peaceful society and is affecting many lives especially the youth, but due to lackadaisical enforcement of the laws on ground this menace has spread and poisoning the society as a whole, therefore, stern actions are required to be taken to curb the nefarious activities of drug suppliers. Any kind of latitude or mercy under sympathy at the part of Courts of law with the accused involved in business of contraband drugs may hamper the efforts of agency involved in detecting the offenders, therefore, the Courts are required to deal with the bail matters of habitual criminals without showing any leniency as the accused involved in selling of contraband material are usually the professional criminals and there is a likelihood that they would repeat the offence if enlarged on bail.

13. For what has been discussed, hereinabove, Petitioner has failed to make out a case for grant of bail, this Petition is accordingly dismissed. Needless to observe that the trial Court shall proceed with the trial uninfluenced by the observations made hereinabove and decide the case on the basis of evidence produced by the parties at trial.

JUDGE

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