

IN THE HIGH COURT OF SINDH, KARACHI

Ubed – ur – Rhman versus Province of Sindh and others

Order with Signature(s) of Judge(s)

Mr. Justice Nisar Ahmed Bhanbhro

22.07.2025

2. Brief facts of the prosecution case as per FIR are that on 28.10.2024, the complainant/SI Syed Akbar Ali Shah posted at SIU, Karachi on a tip off about the presence of narcotics smugglers proceeded to place of information and reached there at about 0300 hours. Police party found four persons present there. Upon seeing police party one male and female suspects made their escape good on the bike by throwing a shopper, whereas one male and one female suspect were apprehended at the spot. The apprehended suspects on inquiry disclosed their names as Ubed-ur-Rehman S/o Shabbir Ahmed Qureshi (the present petitioner) and Mst. Saman W/o Abdul Raheem and disclosed the names of escapee accomplices as Nusrat W/o Sumair D/o Ashraf and Alif @ Khalifa. The police party conducted personal search of the apprehended persons in presence of witnesses and recovered 1005 grams Heroin from Petitioner Ubed ur Rahman and 1005 grams of heroin from accused Saman W/o Abdul Rahim D/o Ilyas, The shopper thrown by the escapee accused Nusrat was found containing 718 grams of heroin. Recovered contraband material

was sealed and the mashirnama of arrest and recovery was prepared at spot in presence of witnesses. The apprehended accused and recovered property were brought at the Police Station and the FIR was recorded.

3. Learned counsel for the petitioner argued that the petitioner is innocent and has falsely been implicated in the case. He argued that the alleged recovery of contraband material has been foisted upon the petitioner. He argued that no private witness was taken by the police party at the time of the alleged arrest though the area is thickly populated, therefore, necessary requirements of Section 103 Cr.P.C. were violated. He argued that alleged arrested and recovery was made in violation of section 17 of SCNS Act 2024 as no video was recorded. He next argued that all the witnesses are police officials, therefore, there is no likelihood of tampering with the prosecution by the petitioner. He lastly argued that the case of the petitioner called for further inquiry and did not fall within the prohibitory clause of section 497 Cr.P.C. he relied upon the case of *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934) and prayed for grant of bail to the petitioner/accused.

4. Mr. Ali Haider Saleem, Learned Deputy Prosecutor General for the State opposed the bail application on the grounds that the petitioner was apprehended red handed and he was found in possession of Heroin weighing 1005 grams heroin. All the witnesses supported the prosecution case in their statements recorded under section 161 CrPC, there was no animosity of the Police Party against the Petitioner for his false involvement. He contended that the officers of police were 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 as Petitioner was involved in heinous offence and not entitled to the grant of bail.

5. We have heard learned counsel for the parties and have perused the record with their able assistance.

6. Argument of the Learned Counsel for 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 others and credibility of their evidence is 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 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 were relaxed. The presumption that a person acts honestly applies, as much in favour of police personnel as of other persons and cannot be distrusted and

suspected without good grounds. 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. More over Petitioner was caught red handed and found in possession of 1005 grams of heroin along with three other accomplices in the wee hours of night at about 0300 hours and availability of persons of public during late hours of night at an abandoned place was not possible.

7. The Petitioner allegedly was found in possession of 1005 grams of heroin for which law provided a minimum imprisonment of ten years; hence, the alleged offence falls within the limb of prohibition contained in section 497 CrPC. Under section 9 of SCNS Act 2024, the punishment for the offence committed in contravention of section 6, 7 & 8 of the Act has been provided, wherein a quantity of Charas weighing between 1000 – 4999 grams is punishable for imprisonment up to fourteen years but not less than nine years, for the same quantity of hashish oil and liquid hashih (1000 to 4999 grams) punishment is imprisonment up to twenty years but not less than fourteen years, for Cocaine of the same quantity (1000 to 4999 grams) punishment is imprisonment up to twenty years but not less than fifteen years. But for Heroine and Morphine the punishment against the recovery of 500 to 1999 grams is imprisonment up to fourteen years but not less than ten years, for the quantity of 2000 to 3999 grams punishment is imprisonment up to twenty years but not less than fourteen years and for the quantity of 4000 to 5999 grams the punishment is extendable for imprisonment to life but not less than twenty years. The legislature in its own wisdom has fixed a separate yard stick for punishment in different types of contraband drugs, keeping regard to the severity and adverse effects of such contraband drugs if consumed. Consumption of Heroin and Morphine effects the brain, heart, liver and lungs, results in restlessness and if injected spreads HIV/AIDs by reuse of the syringe, it causes severe addiction habits wherein rehabilitation of the affectee becomes almost impossible. The recovery memo is duly supported by marginal witnesses who were present on the spot with the seizing officer. No ill-will, mala fide or any animosity has been shown by the petitioner on the part of police for false implication in the instant case. The general rule in like nature cases attracting the prohibitory clause of section 497 CrPC is that the concession of bail cannot be granted to the accused particularly when the accused was found in possession of lethal contraband in dark hours of night planning to transport it and caught red handed. 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 contraband drug suppliers. More over the accused involved in selling of contraband drugs are usually the professional criminals and there is very likelihood that they would repeat the offence if enlarged on bail, therefore the case of a person accused of selling contraband material fell under the exception for grant of bail in comparison to the person accused of drug addiction.

8. In the case of Dolat Khan Versus The State and others reported in 2016 S C M R 1447 Honorable Supreme Court has been pleased to hold as under:

“2. After hearing the learned counsel for the petitioner, learned ASC appearing on behalf of the ANF and perusing the available record with their assistance, it has been noted by us that petitioner was apprehended along with his co-accused while carrying 2400 grams of Charas and 1200 grams of opium. 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.”

9. In another case of Muhammad Aslam Versus the State reported in 2023 S C M R 2056 Honorable 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.”

10. Adverting to the contention of the Learned Counsel for the Petitioner that during arrest and recovery proceedings provisions of section 17 of the SCNS Act 2024 were not followed, which created serious doubt in the arrest and recovery of the accused. Per prosecution case Petitioner was arrested from a street and contraband was recovered from his personal possession. Perusal of section 17 of SCNS Act 2024 burdened the head of the raiding party to record a video when search of a building, place, premises or conveyance where the contraband substances is allegedly concealed is required to be done and it is not possible to obtain the warrant of search, seizure and arrest from the competent Court of law with promptitude. Section 17 of the SCNS Act 2024 reads as under:

17. **Power of entry, search, seizure, and arrest without warrant: (1)**

Where an officer, not below the rank of Inspector of Narcotics Control or equivalent authorized in this behalf by Director General Narcotics Control Sindh, who from his personal knowledge or from

information given to him by any person is of opinion that any narcotic drug, psychotropic substance, precursor chemicals or controlled substance and methamphetamine in respect of which an offence punishable under this Act has been committed is kept or concealed in any building, place, premises or conveyance, and a warrant for arrest or search cannot be obtained against such person without affording him an opportunity for the concealment of evidence or facility for his escape, such officer may-

- (a) enter into any such building, place, premises or conveyance;
 - (b) break open any door and remove any other obstacle to such entry in case of resistance;
 - (c) seize such narcotics drugs, psychotropic substances, precursor chemical, controlled substances and other materials used in the manufacture thereof and any other article which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act; and
 - (d) detain, search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed an offence punishable under this Act; and
- (2) The video recording of all raids, seizures, inspections and arrests shall be made by the officer in-charge of such operations.
- (3) Before or immediately after taking any action under subsection (1), the officer referred to in that sub-section shall record the grounds and basis of his information and proposed action and forthwith send a copy thereof to his immediate superior officer.
- (4) All the offences under this Act shall be cognizable and non bail-able.

Bare reading of the above provisions of law made it abundantly clear that video recording was mandatorily required in the case of search of building, place, conveyance or premises wherein any narcotic drug, psychotropic substance, precursor chemicals or controlled substance and methamphetamine in respect of which an offence punishable under SCNS Act 2024 has been committed is kept or concealed and warrant for such search cannot be obtained promptly. Case of the Petitioner was on a different premise, as on a tip off he was arrested from street as such his arrest was not covered by the provisions of section 17 supra. Honorable Apex Court in the case of Zahid Sarfaraz Gill reported in 2024 SCMR 934 while granting bail to the accused made an observation for video recording of arrest and recovery proceedings through built in mobile camera as the accused was allegedly arrested from a public street of a populated area in the evening time. As such the facts and circumstances

of the present case are distinguishable from the facts and circumstances of Zahid Sarfaraz Gill case supra since the accused has been arrested from a street during late night.

11. Given red-handed arrest of the petitioner with a considerable quantity of a lethal contraband, confirmed by a positive forensic report brings his case within the remit of prohibition, contemplated by section 497 CrPC. Sufficient incriminating material was available on record so tentatively assessed to connect the Petitioner with the commission of crime, hence no case for grant of bail is made out. This Petition therefore fails and the same 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

JUDGE