

IN THE HIGH COURT OF SINDH, KARACHI

Muhammad Hanif versus Province of Sindh and others

Order with Signature(s) of Judge(s)

Mr. Justice Nisar Ahmed Bhanbhro

through Mr. Ali Haider Saleem, Addl. Prosecutor General

29.07.2025

NISAR AHMED BHANBHRO, J. Through the instant petition, petitioner Muhammad Hanif seeks post arrest bail in FIR No.171 of 2025 lodged at Police Station, Malir City, Karachi for an offence punishable under Section 9(1)(3)(c) of Sindh Control of Narcotics Substances Act 2024 (SCNS Act 2024).

2. Brief facts of the prosecution case, as unfolded in FIR are that on 27.03.2025 SIP Muhammad Aslam along with his subordinate staff namely DHC Kamran, PC Ahmed Lashari, PC Zaid Khan were busy in patrolling in police van. Complainant party on a tip off about the presence of narcotics peddler near Shandar Biryani Malir 15 Bridge proceeded to place of information and reached there at about 0345 hours. Police party found one suspected person present there who was apprehended at the spot. The apprehended suspect on inquiry disclosed his name as Muhammad Hanig son of Muhammad Wakil. Police party conducted personal search of the apprehended person in presence of witnesses and recovered 510 grams Heroin from black color shopper. 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. Mr. Mansoor Ahmed Khan Learned counsel for the petitioner contended that the petitioner is innocent and falsely implicated in the case. He argued that the alleged recovery of contraband material was foisted upon the petitioner. He argued that no private witness was associated with the proceedings of the alleged arrest and recovery, though the area is thickly populated, which violated the mandatory requirements of Section 103 Cr.P.C. He argued that the alleged arrest 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 were police officials, therefore, there was no likelihood of tampering with the prosecution evidence if the petitioner was granted bail. 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 powder weighing 510 grams. 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, the alleged offence fell within the prohibitory clause of section 497 CrPC. Petitioner was a habitual offender and facing trial in other similar nature cases. 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, which violated the provisions of section 103 CrPC, as such recovery proceedings became nullity, is without any substance. 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 application section 103 CrPC in the recovery proceedings related to contraband narcotics was ousted through 20 of the SNCS, Act 2024. 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, wisely 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 and sound reasons. Learned Counsel for the Petitioner could not elicit any material to demonstrate the ill will or animosity of the police party against the petitioner resulting in his false implication. More over Petitioner was caught red handed and found in possession of 510 grams of heroin in the wee hours of night at about 0345 hours and availability of persons of public during late hours of night at an abandoned place was not possible. 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, therefore, the evidence of police officials cannot be discarded at this premature stage.

7. The Petitioner allegedly was found in possession of 510 grams of heroin for which law provided a minimum imprisonment of ten years; hence, the alleged offence attracted the prohibition for grant of bail 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 SCNS Act has been provided, a different yard stick of the sentence in terms of weight of the recovered quantity of contraband Narcotics has been provided. Under table to section 9(1) of the SNCS Act quantity of Bhang weighing up to 999 grams is punishable for three years with a rider of not less than six months and fine of fifty thousand rupees, Post or Poppy Straw weighing up to 999 grams is punishable up to 4 years but not less than eight months, Charas weighing between 500 – 999 grams is punishable for imprisonment up to nine years but not less than 5 years, Hashish Oil and Liquid Hashih weighing 500 – 999 grams is punishable up to fourteen years but not less than seven years, Opium weighing 500 to 999 grams is punishable up to nine years but not less than six years, Cocaine weighing 100 – 999 grams is punishable up to fifteen years but not less than seven 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 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.

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 search of the place cannot be obtained promptly. Case of the Petitioner was on a different premise, as on a tip off he was arrested from a bridge in dark hours of night as such his arrest was not covered by the provisions of section 17 supra.

11. If the case of the Petitioner is examined on the touchstone of the dicta laid down by the Honorable Apex Court in the cases of Zahid Sarfaraz Gill reported in 2024 SCMR 934 and Muhammad Abid Hussain versus the State reported in 2025 SCMR 721. The accused were granted bail in the referred cases on the grounds that the arrest and recovery proceedings of contraband material be filmized through video recording to authenticate and substantiate the evidentiary value of such recovery in terms of article 164 of the Qanun e Shahadat Order and the case of the accused was punishable up to a maximum punishment of fourteen years but not less than nine years. In the Zahid Sarfaraz Gill case supra the accused had placed on record the material showing enmity with complainant party as he had filed an application against the police much prior to his arrest and was allegedly arrested from a popular public park of a populated area in the evening time. In the case of Muhammad Abid Hussain Supra accused was allegedly arrested in the evening time at about 4:45 PM. The accused in both the cases referred supra was facing charge of an offence punishable up to fourteen years but not less than nine years and for the purposes of bail minimum punishment was considered thus it was held that the offence did not fall under the prohibitory clause of section 497 CrPC. In the present case the Petitioner was arrested during late hours of night and due to darkness filmizing of the recovery proceedings would not have yielded results. The offence alleged against the petitioner also carried a minimum punishment of ten years and fell within the prohibition contained under section 497 CrPC. The facts and circumstances of the present case are distinguishable from the facts and circumstances of Zahid Sarfaraz Gill and Muhammad Abid Hussain case supra.

12. 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. In the present case Learned Additional Prosecutor General has placed on record criminal record of the Petitioner which transpired that he was involved in FIR No 462 of 2024 of Police Station Malir City. Petitioner was released in bail in the said FIR by Learned Trial Court and after getting bail in earlier cases he got involved into the drug peddling again and 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.

13. 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.

14. 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.⁶ 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.

15. 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."

16. 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. Tentative assessment of material available on record demonstrated that sufficient incriminating evidence was collected during investigation 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 say that the Trial Court shall conduct the trial in accordance with law and render the final verdict without being influenced 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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