

PRESENTED ON
14-01-2025

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Agg-ul-Hassan
14/1/25
11c Deputy Registrar 226

IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI

Bail Application No 114 / 2024

1. ZUBAIR S/O MURAD KHAN
2. MURAD KHAN S/O ABDUL RASHEED

Muslim, Adult R/o Karachi presently confined
In Central Jail at Karachi

Applicant/Accused

R/o A No 133 Mohalla
Welfare Colony Gulshan-e-Iqbal
Block 2 Karachi

VERSUS

The State

Respondent

FIR No. 525/2024

U/S: 6/9(4) CNSA, 2022

P.S: PIB Colony

POST ARREST BAIL APPLICATION UNDER SECTION 497 OF
Cr.P.C

THE HIGH COURT OF SINDH AT KARACHI

CrI. Bail Application No.114 of 2025

Applicants :1. Zubair son of Murad Khan.
2. Murad Khan son of Abdul Rasheed
Through Mr. Abdul Rauf, adv. for Applicant/accused.

Respondent :The State
Through Mr. M. Raza, Dy. Prosecutor General

Date of Hearing : 14.03.2025

Date of Order : 21.03.2025.

ORDER.

Jan Ali Junejo, J.— The present Criminal Bail Application has been filed on behalf of the Applicant/Accused, who is seeking post-arrest bail in connection with a case stemming from FIR No.525 of 2024, registered at P.S. P.I.B. Colony, Karachi, under Section 6/9(4), of the Control of Narcotic Substances Act, 1997 (amended in 2022) The Applicant/Accused initially approached the learned Sessions Court by filing Bail Application No.6345 of 2024, which was subsequently dismissed by the Court of the learned Additional Sessions Judge/Special Judge-I, Karachi-East, vide Order dated 23-12-2024.

2. The facts relevant to the present criminal bail application are as follows:

"Acting on a tip-off received during patrol, SIP Muhammad Qasim Ali and police officials intercepted suspects Zubair (son of Murad Khan) and Murad Khan (son of Abdul Rasheed) near University Road, Karachi, at approximately 4:30 AM. A search revealed 160 grams of ICE in 141 packets from Zubair's kameez pocket, along with cash and his CNIC, while 250 grams of ICE in 18 packets were recovered from Murad Khan's bag, alongside cash and his ID. The searches, conducted without private witnesses but with police officials as mushirs, led to the accused's arrest under Section 6/9(4) CNSA 2022, with recovery memos prepared on-site and seized drugs sealed and taken into custody."

3. The learned counsel for the Applicant has argued that the applicants (father and son) are innocent victims of mala fide implication, falsely accused due to collusion between authorities and influential neighbors, with no credible evidence linking them to the alleged offense.



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He further contends that the FIR was lodged with an unexplained delay of 1 hour and 20 minutes despite the police station being merely 2 km from the incident site, casting doubt on its authenticity. He argues that the applicants have no direct or indirect connection to the alleged crime, rendering the case fit for further inquiry and warranting bail. He asserts that the applicants were illegally detained after a warrantless raid by Sindh Rangers on 05-12-2024, during which nothing incriminating was found. The FIR was later foisted upon them after their family resisted extortion demands. He emphasizes that the FIR is retaliatory, triggered by the applicants' prior petitions seeking protection from harassment and threats by neighbors over property disputes. He highlights that Applicant No. 1 was acquitted in FIR No. 73/2023 and granted bail in three subsequent false FIRs (2024), where he was falsely declared an "absconder." The current FIR is a pre-emptive tactic to obstruct his bail confirmation in another case. He stresses the prosecution's failure to associate independent witnesses despite the incident occurring in a populated area, violating Section 103 Cr.P.C. and rendering the recovery doubtful. He submits that under Sections 6/9(4) CNSA 2022, the maximum punishment of 7 years falls outside Section 497 Cr.P.C.'s restrictive clause, making bail permissible. He underscores that the recovered quantities (160g and 250g ICE) qualify as borderline cases (below 1,000g), where bail is routinely granted. He maintains that the applicants, with no prior convictions or history of absconding, are entitled to the presumption of innocence and pose no risk of tampering with evidence. The learned counsel prays that bail be granted to the applicants in the interest of justice, as the case suffers from material contradictions, procedural irregularities, and a lack of independent evidence, warranting further inquiry. The learned counsel relied upon 1997 SCMR 947; 2015 SCMR 735; 2020 YLRN 43 (Muhammad



Younis vs State); 2017 YLR 874; 2016 SCMR 1424; 2015 SCMR 1077; 2012 SCMR 573; PLD 2012 SC 380; 2016 P.Cr.LJ 1075, 831, 1315.

4. The learned Deputy Prosecutor General (DPG) contends that the applicants are charged under **Sections 6/9(4) CNSA 2022** involving the recovery of **410 grams** of ICE, a commercial quantity, which falls within the restrictive clause of **Section 497 Cr.P.C.**, warranting strict denial of bail. He argues that the prosecution has established a *prima facie* case through recovery memos, sealed parcels, and police witnesses, whose testimonies cannot be discarded merely for being official. He emphasizes that the delay in FIR lodging (1 hour 20 minutes) is justified for procedural compliance and documentation. He further asserts that the absence of private witnesses does not vitiate the recovery, as police officials acted as *mushirs* under exigent circumstances (nighttime operation), and reliance on precedents like *2019 SCMR 232* supports such procedural validity. The DPG rejects claims of *mala fide* implication, stating no evidence proves collusion between authorities and neighbors, while the applicants' prior acquittals/bail in unrelated cases do not negate their culpability here. He underscores the gravity of drug trafficking, highlighting the risk of applicants absconding or tampering with evidence, given their history of multiple FIRs. The DPG concludes that the case does not qualify as "borderline" (total recovery: 410g), and bail must be denied to uphold public interest and deterrence under CNSA.



5. I have given due consideration to the arguments advanced by the learned counsel for the applicant/accused, as well as the learned Deputy Prosecutor General. Furthermore, I have meticulously examined the material available on record with utmost care and judicial prudence. A thorough review of the case record indicates that the quantity of ICE drug recovered from Applicant Zubair is 160 grams, while 250 grams were seized from the possession of accused Murad. Both quantities are below

1000 grams, meaning the alleged offense does not fall under the prohibitory clause of Section 497(1) of the Cr.P.C. Furthermore, as the challan has already been submitted, the continued incarceration of the applicants would serve no meaningful or beneficial purpose. In Case of *Aya Khan and another v. The State (2020 SCMR 350)*, the Supreme Court of Pakistan held that: *"Without discussing the merits of the case lest it prejudice the case of one or the other side, suffice it to say that in the FIR or in the recovery memo, nowhere it is stated that whether it was net or gross weight of the narcotics and in this eventuality it becomes a border line case between subsections (b) and (c) of section 9, C.N.S.A., 1997. Thus the benefit of doubt in this aspect shall go to the accused"*. In a similar case, *Mst. Nazia and another v. The State (2024 MLD 843)*, this Court granted bail to an accused charged with the possession of 4 kilograms of charas, 2.5 kilograms of ice, and 500 grams of heroin powder, highlighting that the case warranted further inquiry. In light of these circumstances, the applicant is entitled to bail based on the provisions of Section 497(2) of the Criminal Procedure Code (Cr.P.C.).



6. For the reasons outlined above, the current bail applications submitted on behalf of the applicants/accused are granted as prayed. The applicants/accused are hereby granted bail on the condition that they furnish solvent sureties of Rs.100,000 (Rupees One Hundred Thousand) each to the satisfaction of the learned trial Court, along with a P.R. bond for the same amount. The observations made in this Order are limited to the adjudication of this bail applications and will not affect the rights of either party during the trial. These are the reasons for the short Order dated: 14-03-2025.


JUDGE