

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 534/2025.

Applicant : Sher Dil son of Raheem Khan,
Through Mr. Shah Imroz Khan, learned advocate

Respondent : The State
through Mr. Sarfaraz Ali Mangi, Prosecutor ANF

Date of hearing : 11-04-2025
Date of order : 24.04.2025

ORDER

KHALID HUSSAIN SHAHANI, J. The applicant seeks the concession of post-arrest bail in a case bearing crime No. 41 of 2014, offence under section 9-C, 14, 15 of CNS Act of Police Station ANF Clifton, Karachi. It is noted that the earlier bail plea of the applicant was dismissed by the learned Special Court-II, CNS, Karachi, vide order dated 24-12-2024.

2. According to the prosecution's narrative, on 11.12.2014, Inspector Attaullah Khan, accompanied by other police officials, proceeded to PICT Gate, KPT Fire Brigade, M.A. Jinnah Road, Karachi, pursuant to Entry No. 6 recorded at 0810 hours. Upon arrival, they found a Hino Truck bearing Registration No. TKN-241, in which three individuals, Riffatullah, Tahir Ali, and clearing agent Khalid Barki, were present. Riffatullah claimed to be the owner of the vehicle, stating that it was loaded with stones dispatched from an agency in Peshawar to Karachi. He further disclosed that he had been attempting to contact one Irfan on cell number 0332-2164502, but the phone remained switched off. The truck owner produced a receipt bearing Bilty No. 350 dated 06.12.2014, indicating consignor details as "Azad Waziristan, Kohat Road Scheme Chowk, Peshawar," with one General Declaration (GD) filed in the name of Sher Dil (CNIC No. 17301-0482226-1), the exporter being M/s. Shamsher Zameer Ltd., Jalalabad, Afghanistan, and the importer listed as North West Mineral Pvt. Ltd., Arbab Godown, Peshawar. Upon opening the truck, twenty large nylon bags were found, serially marked from 1 to 20. These were offloaded using a lifter, and upon inspection, it was revealed that each contained 680 cloth pouches. Upon opening the

pouches, 30 kilograms of heroin were recovered. The vehicle was taken into custody, and the recovered soapstone lumps were relocked in the truck. Consequent upon; case was registered inter alia on above facts.

3. Learned counsel for the applicant has contended that the applicant has been falsely implicated in this case with malafide intention and ulterior motives. It is submitted that the applicant's name surfaced only in the statement of co-accused Hameedullah, recorded by the ANF, and that the applicant was unaware of any proceedings or declaration of abscondence against him, as no warrants or summons were ever served at his residence. He emphasized that the supplementary challan filed after the applicant's arrest confirms that he had no connection with the alleged contraband, consignment, or the related built. The investigating officer himself, in his report under Section 173 Cr.P.C., observed that the applicant merely arranged a vehicle on behalf of an acquaintance from his village and that there was no evidence of the applicant's involvement with the contraband. It is further submitted that a *Jirgah* was held between the vehicle owner and the applicant, during which the former undertook to have the applicant's name removed from the challan, although this undertaking was not honoured. Learned counsel argued that there is a complete absence of incriminating material linking the applicant to the narcotics, and that the requirements of Section 103 Cr.P.C. were blatantly disregarded. The applicant neither had constructive nor conscious knowledge of the narcotics allegedly transported by the co-accused. Mere absconding, it was submitted, is not sufficient ground to refuse bail when the case otherwise falls within the ambit of further inquiry. Reliance has been placed on various precedents including 2023 P.Cr.L.J Note 10, 2025 SCMR 318, PLJ 2019 Cr.C 1345, 2023 YLR 363, 2024 MLD 327, 2020 P.Cr.L.J Note 25, 2009 SCMR 299, 2009 MLD 468, and PLD 2021 SC 738. 2021 SCMR 1804, unreported Cr. Bail order in Cr. Bail Application NO.S-200/2023 of Sindh High Court, unreported Cr. Bail order in Cr. Bail Application NO.2825-P of 2023 of Peshawar High Court Peshwar, 2020 SCMR 444, 2023 YLR 171, 2020 YLR Note 8, 2020 YLR 1429, 2021 SCMR 324, 2019 SCMR 1651, 2019 YLR Note 68, 2012 YLR 2387, 2020 P.Cr.L.J

1512 (Baluchistan), 2022 SCMR 685, 2017 SCMR 531, PLJ 2021 Cr.C 1339, 2023 YLR 363, 2023 P.Cr.L.J Note 10, 2017 YLR 874, unreported Cr. Bail order in Cr. Bail Application NO.S-88/2022 of Sindh High Court, PLJ 2016 Cr.C (Peshawar) 770, unreported Cr. Bail order in Cr. Bail Application No.1502/2018 of Sindh High Court.

4. On the other hand, learned Special Prosecutor for ANF opposed the bail plea, arguing that the applicant had facilitated the booking of the vehicle on behalf of one Gul Khan, who is alleged to be the mastermind behind the transportation of narcotics. It is contended that the vehicle arranged by the applicant was used for trafficking a substantial quantity of narcotics. The learned prosecutor also emphasized that the ANF officials harboured no animosity against the applicant, and that the accused is reportedly a habitual offender involved in drug trafficking through various consignment bookings. On these grounds, the applicant, according to the prosecution, is not entitled to the concession of bail.

5. Record reflects, the case against the applicant primarily hinges upon the recovery of a guarantor slip allegedly bearing his particulars, which emerged during the arrest of a co-accused in possession of a narcotics consignment. The said slip is stated to relate to Truck No. TKN-241, purportedly used for transportation of the illicit consignment. While the prosecution seeks to establish the applicant's involvement on the basis of this document and his alleged association with the co-accused Gul Khan, a person with previous criminal antecedents, it is an established principle of law that mere association or provision of logistical assistance, absent direct recovery or possession, does not ipso facto constitute conscious possession or active participation within the contemplation of Section 9(c) of the Control of Narcotic Substances Act, 1997.

6. The prosecution further refers to the applicant's alleged role in facilitating booking of the vehicle and a subsequent offer to indemnify the vehicle owner in the sum of Rs. 7.5 million, seeking thereby to establish his complicity. However, such inferences, though not devoid of

suspicion, fall short of the evidentiary threshold required at the bail stage to deny the statutory relief under Section 497(2) Cr.P.C. It is also a trite principle that bail cannot be withheld as a form of anticipated punishment.

7. The issue of the applicant's abscondence spanning over nine years, though indeed a relevant consideration, cannot in itself be regarded as conclusive of guilt. The Hon'ble Supreme Court in a famous case of Mitho Pitafi Vs. The State (2009 SCMR 299) was pleased to grant bail to accused and observed that mere abscondence will not come in the way while granting bail when the accused has good case for grant of bail and further held that abscondence though capable of raising an adverse inference, must be assessed in the context of the overall evidentiary framework and not treated as a sole determinative factor for denial of bail, particularly where other aspects of the prosecution case invite judicial scrutiny under the doctrine of *further inquiry*. Moreover, no direct recovery has been effected from the applicant nor is he shown to have been present at the scene or in exclusive control of the contraband.

8. In view of the above legal and factual matrix, and keeping in mind the principle that deeper appreciation of evidence is not warranted at the bail stage, I am of the considered view that the case against the applicant requires further inquiry within the meaning of Section 497(II) Cr.P.C. The prosecution material, though suggestive, is not so conclusive as to negate reasonable doubt at this incipient stage of proceedings.

9. Accordingly, the applicant is admitted to bail subject to furnishing solvent surety in the sum of Rs.500,000/- (Rupees five hundred thousand only) and a P.R. bond in the like amount to the satisfaction of the learned trial Court.

10. Needless to observe that the observations made hereinabove are tentative in nature and shall not influence the merits of the case at trial.

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