

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Criminal Bail application No.S-1051 of 2025

Applicant : Bashir Ahmed s/o Dildar Khoso through Mr. Dildar Ali Unar, advocate.

Respondent : The State, through Mr. Irfan Ali Talpur, Deputy Prosecutor General, Sindh along with ASI Peeral Khan Solangi, PS Budhapur.

Date of hearing : 26.09.2025

Date of order : _____

ORDER

TASNEEM SULTANA, J.- Through this bail application, the applicant Bashir Ahmed seeks post arrest bail in Crime No.11 of 2025, under Sections 9 (i) 3 (b) The Sindh Control of Narcotic Substances Act, 2024 (SCNSA), registered at PS Budhapur, Jamshoro, after his post arrest bail application was declined by the learned Sessions Judge/Special Judge CNS, Jamshoro, vide order dated 29.08.2025.

2. It is alleged that on 23.07.2025 police party of PS Budhapur, Jamshoro, headed by ASI Peeral Khan Solangi apprehended applicant/accused from Vehari Link Road on being found in possession of 510 grams Charas contained in a black shopper under memo of arrest & recovery prepared in presence of HC Abdul Jabbar and PC Mazhar Ali; for that he was booked in the aforementioned FIR.

3. Learned counsel for the applicant contended that the applicant/accused is innocent and has been falsely implicated by the complainant; that the alleged place of arrest and recovery is a thickly populated area, yet no private person was associated to witness the alleged proceedings; that except for the version of the police, there is no independent material to connect the applicant/accused with the commission of the alleged offence; that the complainant relied solely on his subordinate staff and failed to associate private witnesses, which weakens the prosecution case. In support of his contentions he has relied upon 2025 PCrLJ 1557 (*Khushal versus The State*) and 2025 MLD 730 (*Muhammad Yousif versus The State*).

4. Conversely learned DPG opposed the instant bail application and contended that applicant/accused is nominated in FIR and 510 grams of Charas has been recovered from his exclusive possession; that the applicant is a habitual offender; that no malafide on the part of police for false implication of applicant/ accused has been established; that the FIR has been registered promptly.

5. Heard and record perused.

6. It reflects from the record that the applicant/accused was apprehended at the spot and Charas was recovered from him. The entire recovered quantity of narcotics was sent to the laboratory for analysis, and the chemical examiner confirmed it as "Charas." The report is available in the police file.

7. Amended section 35(1) of the SCNSA stipulates that an accused shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death, imprisonment for life, or imprisonment exceeding five years. In the present case, the applicant is charged under Section 9-1 (3)(b) of the Act for possession of 510 grams of charas. Under the Table appended to Section 9(1), the punishment for possession of 500 to 999 grams of charas is imprisonment which may extend to nine years but shall not be less than five years along with fine. Hence, the alleged offence falls within the category of offences punishable with imprisonment exceeding five years, making it non-bailable in terms of the amended Section 35(1) of the said Act. The Honourable Supreme Court, while considering the offences punishable under the CNS Act to be heinous in nature against the society at large, in the judgment in the case titled *Socha Gul vs. State 2015 SCMR 1077* has observed as under :-

"It is pertinent to mention here that offences punishable under C.N.S. Act of 1997 are by its nature heinous and considered to be the offences against the society at large and it is for this reason that the statute itself has provided a note of caution under section 51 of C.N.S. Act of 1997 before enlarging an accused on bail in the ordinary course. When we refer to the standards set out under section 497, Cr.P.C. for grant of bail to an accused involved in an offence under section 9(c) of C.N.S. Act of 1997, even on that basis we find that an accused charged with an offence, prescribing various punishments, as reproduced above, is not entitled for grant of bail merely on account of the nature or quantity of narcotic substance, being four kilograms. Firstly, as deeper appreciation of evidence is not permissible at bail stage and secondly, in such situation, looking to the peculiar features and nature of the offence, the trial Court may depart from the normal standards prescribed in the case of Ghulam Murtaza (supra) and award him any other legal punishment. Thus, in our opinion, ratio of judgment in the case of Ghulam Murtaza (supra) is not relevant at bail stage."

8. Adverting to the contention of the learned counsel for the applicant that during arrest and recovery proceedings provisions of section 17 of the SCNSA were not followed, which creates serious doubt in the arrest and recovery proceedings. In this context learned counsel for the applicant referred case of *Zahid Sarfaraz Gill reported in (2024 SCMR 934)*. For the purpose of understanding Section 17 of SCNSA is reproduced 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."

9. A plain reading of the above provisions of law makes it manifestly clear that video recording is mandatorily required in cases where a search of a building, place, conveyance, or premises is conducted for narcotic drugs, psychotropic substances, precursor chemicals, controlled substances, or methamphetamine, in respect of which an offence punishable under the SCNSA, 2024, has been committed, and where obtaining a search warrant promptly is not

possible. The case of the applicant, however, stands on a different footing, as he was apprehended from link road Unarpur and 510 grams charas was recovered from his possession; hence, his arrest does not fall within the ambit of section 17, supra. The Honourable Supreme Court, in the case of *Zahid Sarfaraz Gill (2024 SCMR 934)*, while granting bail, observed the necessity of video recording of arrest and recovery proceedings through built-in mobile cameras, particularly when the arrest was effected from a public street in a populated area during evening hours. The facts and circumstances of the present case are, therefore, distinguishable, since the accused herein was apprehended from link road in morning.

10. Allegedly, 510 grams of Charas was recovered from the possession of the applicant, which though does not fall within the prohibitory clause of Section 497, Cr.P.C., however, the offence is non-bailable in terms of the amended Section 35(1) of the SCNSA, 2024. Furthermore, the Hon'ble Supreme Court of Pakistan in various pronouncements has held that in cases of this nature, the concession of bail can be declined depending upon the attending circumstances. In the present case, the applicant is a habitual offender, and two other cases of similar nature are already registered against him; hence, he does not deserve the concession of post-arrest bail.

11. It is a well-settled principle of law that deeper appreciation of evidence is not warranted at the bail stage, and determining the merits of the case at this point would be inappropriate.

12. Prima facie, sufficient incriminating material is available on record connecting the applicant with the commission of the offence; therefore, no case for grant of bail is made out. Consequently, this bail application is dismissed.

13. Needless to observe, the trial Court shall proceed independently on the basis of evidence adduced before it, uninfluenced by the observations made hereinabove.

JUDGE