

IN THE HIGH COURT OF SINDH CIRCUIT COURT AT HYDERABAD

Criminal Bail Application No.S-932 of 2025

Applicant : Sher Muhammad son of Walyo Khoso
through Mr. Rizwana Akhtar
Khanzada, Advocate

Respondent : The State through Ms. Sana Memon,
Assistant Prosecutor General, Sindh

Date of Hearing : 30.09.2025

Date of Order : 30.09.2025

ORDER

Jan Ali Junejo, J.- The applicant, *Sher Muhammad S/o. Walyo Khoso*, seeks post-arrest bail under Section 497 of the Code of Criminal Procedure, 1898 read with all enabling provisions, in connection with Crime No.44 of 2025, registered at *Police Station Looni Kot*, for an offence punishable under Section 9(1)(3)(c) of the Sindh Control of Narcotic Substances Act, 2024 (“the SCNS Act, 2024”). The learned trial Court (Additional Sessions Judge-I, Kotri) dismissed his bail application vide order dated 12.08.2025. The applicant has now invoked the jurisdiction of this Court seeking release on bail.

2. Briefly stated, on 30.07.2025 at about 1530 hours, ASI Imtiaz Ali Soomro of P.S. Looni Kot, while on patrol duty along with police officials, noticed a person walking near the PSO Petrol Pump, Looni Kot, carrying a red plastic bag. Upon seeing the police vehicle, the person allegedly attempted to flee but was apprehended. Upon checking, the bag was found to contain 1230 grams of charas (three small pieces and two large pieces wrapped in yellow plastic marked “Pari”). The accused disclosed his name as *Sher Muhammad Khoso*, and stated that he had purchased the contraband from certain Pathans of Hyderabad for sale along the motorway. The police sealed the recovered narcotics on the spot and prepared the memo of recovery in presence of police mashirs, and thereafter lodged the FIR.

3. Learned counsel for the applicant, Mr. Rizwan Akhtar Khanzada, contended that the applicant is innocent and has been falsely implicated in this case at the instance of political opponents due to previous enmity. He

argued that the entire story narrated in the FIR is unnatural, improbable, and concocted, as no prudent person would walk on a public highway or motorway carrying over one kilogram of narcotics in a plastic bag. It was further argued that no private or independent witnesses were associated at the time of alleged recovery, despite the place of incident being a public thoroughfare, which renders the recovery highly doubtful. Learned counsel further submitted that the investigation has been completed, the challan has been submitted, and the applicant is no longer required for investigation. It was urged that the case against the applicant falls within the ambit of further inquiry under Section 497(2) Cr.P.C., as the prosecution has failed to collect any credible or corroborative evidence connecting the applicant with the offence except the statements of interested police officials. Learned counsel further submitted that the applicant is a permanent resident of District Jamshoro, having deep roots in the locality, and there is no likelihood of absconding or tampering with evidence if released on bail. He finally prayed that the applicant be admitted to post-arrest bail pending trial in the interest of justice and equity.

4. Conversely, learned Assistant Prosecutor General Ms. Sana Memon opposed the grant of bail and contended that the applicant was found in actual possession of 1230 grams of charas, which squarely attracts the prohibitory clause of Section 9(1)(3)(c) of the *Sindh Control of Narcotic Substances Act, 2024*, punishable with severe imprisonment. She argued that the recovery was effected on the spot, duly supported by the mashirnama, the statements of the police witnesses, and the chemical examiner's report, which confirms the recovered substance as charas. Learned APG further contended that under Section 35(1) of the said Act, there exists a statutory bar on the grant of bail, as the legislature has expressly provided that "bail shall not be granted to an accused person charged with an offence under this Act," and this provision overrides Sections 496 and 497 Cr.P.C. by virtue of its non-obstante clause. She maintained that the Act has repealed the earlier federal CNS Act, 1997 within the Province of Sindh through Section 45, and the present offence is therefore governed exclusively by the new provincial statute. Learned APG argued that no exceptional circumstances, mala fide, or illegality in the recovery have been demonstrated to warrant deviation from the statutory prohibition. She emphasized that narcotics offences are heinous and destructive to society, and granting bail in such cases would defeat the very object of the special law. She thus prayed for dismissal of the bail application.

5. I have carefully considered the submissions of both sides, examined the record, and perused the relevant provisions of law. The *Sindh Control of Narcotic Substances Act, 2024* came into force on 15.10.2024 and, by virtue of Section 45, repeals the *Control of Narcotic Substances Act, 1997* within Sindh. Section 35(1) of the SCNS Act provides: “*Notwithstanding anything contained in Sections 496 and 497 of the Code, bail shall not be granted to an accused person charged with an offence under this Act*”. This provision imposes a statutory bar on the grant of bail to any person accused of an offence under the said Act. Its language is clear, mandatory, and unequivocal, leaving the Court with no discretion to enlarge an accused on bail except in cases where constitutional infringements, patent illegality in arrest or recovery, or sufficient grounds for further inquiry are clearly demonstrated on the record.

6. The alleged recovery of 1230 grams of charas falls well within the prohibitory clause, attracting punishment up to life imprisonment under Section 9(1)(3)(c), of the Act, 2024. Such an offence is grave and heinous, directly affecting public health and societal interest. The law treats narcotics offences with strictness due to their devastating social impact. The plea of false implication due to political enmity is a bald assertion unsupported by any material or specific particulars. No document, complaint, or corroborative statement has been produced to substantiate the alleged political motivation or demand for bribe. Likewise, the argument that the story is improbable or that no private mashir was associated, is a matter of trial and cross-examination, not of bail. It is well-settled that where the recovery is made by police officials in due course of duty, their evidence cannot be discarded merely because private witnesses were unavailable or unwilling to join. The applicant’s counsel has not pointed out any procedural violation in the recovery or custody of the narcotics which could cast serious doubt on the prosecution version at this stage.

7. The express non-obstante clause in Section 35(1) unequivocally overrides the general provisions of the Code of Criminal Procedure regarding bail. Therefore, unless the applicant is able to demonstrate that (i) the provisions of the Act are inapplicable to his case, or (ii) he has been falsely implicated through mala fide intention or the recovery is tainted with illegality, or (iii) there exist sufficient grounds warranting further inquiry into the truth of the allegations, the Court cannot exercise its discretion to release him on bail in contravention of the express statutory prohibition.

8. The learned defence counsel invoked the *further inquiry* clause under Section 497(2) Cr.P.C. However, considering the quantity recovered and the consistent ocular and documentary material on record, no reasonable ground exists at this stage to hold that the applicant is not guilty or that his case calls for further probe. No violation of Article 10-A (right to fair trial) or Article 9 (security of person) of the Constitution has been demonstrated. The applicant will have the opportunity to defend himself and challenge the evidence during trial. The right to liberty, though fundamental, is subject to law, and the present statutory bar constitutes such law duly enacted by the Provincial Legislature.

9. For the foregoing reasons, and in view of the statutory prohibition contained in Section 35(1) of the *Sindh Control of Narcotic Substances Act, 2024*, this Court is of the considered opinion that the applicant is not entitled to the concession of post-arrest bail. The plea of false implication and further inquiry are unsupported by record and do not bring the case within any recognized exception. Accordingly, the Criminal Bail Application No. S-932 of 2025 filed by Applicant *Sher Muhammad S/o. Walyo Khoso* is hereby dismissed.

10. It is, however, clarified that the observations made herein are tentative in nature, confined to the disposal of the instant applications, and shall not prejudice the case of either party during trial, which shall be decided strictly on its own merits. These are the reasons of the Short Order dated: 30-09-2025.

JUDGE