

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S-782 of 2025

Applicants : 1. Aatif Hussain s/o Aftab Hussain Jatoi
2. Safeer Ahmed s/o Rasheed Ahmed Shaikh
Through Mr. Muhammad Zohaib Azam Advocate

The State : Through Mr. Mansoor Ahmed Shaikh,
Deputy Prosecutor General.

Date of hearing : 18.09.2025
Date of Order : 18.09.2025

ORDER

KHALID HUSSAIN SHAHANI, J.— Applicants Aatif Hussain Jatoi and Safeer Ahmed Shaikh seek post arrest bail in a case bearing crime No.117/2025, offence under Sections 9(i), 3(b) Sindh CNS Act, 2024, registered at Police Station Tharushah. Prior to this, their bail plea was declined by the Court of learned Special Judge (Competent Court) Naushahro Feroze vide order dated 26.08.2025.

2. The facts, as set out in the FIR lodged on 03.08.2025 by ASI Ghulam Qadir Mangnejo, are that on the relevant date and time the complainant along with his subordinate staff departed the police station at 11:00 a.m. for routine patrolling vide entry No.05. When they reached link road Tharushah near Darbelo Mori stop, they observed two persons carrying black shopper bags in their hands who, on seeing the police party, attempted to flee but were apprehended. As no private mashirs were available, the recovery and arrest proceedings were conducted in the presence of police officials PC Ayaz Ali Sargani and PC Zahud Hussain Siyal. On inquiry, the arrested persons disclosed their names as Aatif Hussain Jatoi and Safeer Ahmed Shaikh. From Aatif Hussain, two pieces of charas weighing 800 grams were recovered, out of which 100 grams were separated for chemical analysis while the remainder was sealed. From Safeer Ahmed, two pieces of charas weighing 700 grams were recovered, 100 grams were separated for analysis, and the

remaining contraband sealed. A memo of arrest and recovery was prepared at the spot and the FIR registered accordingly.

3. Learned counsel for the applicants argued that both accused are innocent and have been falsely implicated by the police in this case. He emphasized that no independent civilian witnesses were associated with the recovery proceedings in contravention of Section 103, Cr.P.C., thereby diminishing the evidentiary value of the prosecution case. It was further contended that despite the availability of modern devices, no video recording of the recovery was made by the police, which is a mandatory requirement under the Sindh CNS Act, 2024. Counsel urged that the minimum prescribed punishment of nine years does not attract the prohibitory clause contained in Section 497(1) Cr.P.C., thus entitling the accused to bail as a matter of course. In support, reliance was placed upon *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934), *Muhammad Abid Hussain v. The State* (2025 SCMR 721), and an unreported judgment passed in Const. Petition No. D-729 of 2025, wherein the Hon'ble Supreme Court held that procedural lapses and absence of corroboration in narcotics cases create sufficient doubt at bail stage.

4. Conversely, learned Deputy Prosecutor General opposed the grant of bail by contending that the applicants were apprehended red-handed with substantial quantity of contraband, the offence is non-bailable under the statute, and narcotics trafficking being a menace to society requires deterrence through strict application of law.

5. I have heard the arguments and examined the record. It is case of prosecution that the alleged recovery of charas has been made from the possession of the applicants; however, it is equally evident that no video recording was prepared during the recovery proceedings. This omission, in light of the statutory requirement of the Sindh CNS Act, 2024, cannot be brushed aside lightly. Moreover, the recovery was allegedly affected at a

public place, yet no private mashirs were associated, which is a clear violation of Section 103 Cr.P.C. Such procedural lapses, as held by the Hon'ble Supreme Court in the aforementioned cases, cast serious doubt on the credibility of the prosecution story at the bail stage.

6. Furthermore, the statutory provision stipulates punishment, which may extend to fourteen years but shall not be less than nine years. The minimum punishment of nine years falls below the threshold of ten years envisaged by Section 497(1) Cr.P.C., thereby not attracting the prohibitory clause. It is well-settled law that where the minimum punishment does not cross the ten-year bar, grant of bail becomes a rule and its refusal an exception. Courts are expected to lean in favor of liberty unless strong and exceptional grounds exist to deny it.

7. Considering the above aspects, the absence of private mashirs, the failure to prepare video recording, the punishment not engaging the prohibitory clause, and the settled judicial precedents, the applicants have succeeded in making out a prima facie case for bail. The interests of justice can be adequately safeguarded by admitting them to bail on suitable terms rather than keeping them incarcerated indefinitely pending trial.

8. Accordingly, the instant bail application is allowed. Both applicants, namely Aatif Hussain Jatoi and Safeer Ahmed Shaikh, are admitted to post-arrest bail subject to their furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand only) each and a personal bond in the like amount to the satisfaction of the trial Court. The observations made herein are tentative in nature and shall not prejudice the case of either party at trial.

J U D G E