

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S-808 of 2025

Applicant : Masood Ahmed son of Muhammad Waris Korai
Through Mr. Jawad Hussain Rajper, 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.— Applicant Masood Ahmed Korai seeks post arrest bail in a case bearing crime No.02/2025, for offence under Sections 9 (C) CNS Amendment Act, 2022, registered at Police Station Phuloo. Prior to this, his bail plea was declined by the Court of learned Ist Additional Sessions Judge/(MCTC), Special Judge for (CNS) Khairpur vide Order dated 02.05.2025.

2. The facts as narrated by the prosecution are that on 14.04.2025, the complainant, ASI Hussain Bux Mallah, along with his subordinates, during patrolling pursuant to entry No.06 at 1300 hours, encountered two persons riding a motorcycle near Jogi Wali Machine coming from the southern side carrying a plastic sack. Upon spotting the police party, one individual identified as Ashique alias Sudheer fled, while the other person, later revealed to be Masood Ahmed Korai, was apprehended. The police recovered a sack containing hemp weighing 15,000 grams, which was seized and sealed on the spot. Notably, in absence of private mashirs, the police deputed two of their own officials, HC Munir Ahmed Khuhro and PC Faiz Muhammad Narejo, to serve the role of mashirs while recording the arrest and recovery memo. The FIR and subsequent investigation led to the registration of the case implicating the applicant.

3. Counsel for the applicant vehemently argues that the accused is innocent and has been falsely implicated. He emphasizes critical procedural

infirmities, notably the failure to associate independent civilian mashirs during recovery, which contravenes the mandatory requirements of Section 103 Cr.P.C. The absence of private mashirs seriously undermines the authenticity and credibility of the seizure. Furthermore, counsel highlights that no video recording of the alleged recovery, which is a settled mandatory safeguard under narcotics enforcement protocols and modern judicial precedents, was conducted by the complainant. This absence creates further doubt about the prosecution's compliance with procedural safeguards designed to prevent fabrication.

4. Learned counsel emphasized that the minimum prescribed punishment under the Sindh CNS Amendment Act, 2022 for the offence in question is nine years, with a maximum of fourteen years imprisonment. Since the minimum sentence is below the ten-year threshold set by Section 497(1) Cr.P.C., the prohibitory clause barring bail does not activate, making bail the rule rather than the exception. The applicant's counsel supports these submissions with authoritative case law including the recent Supreme Court decision in *Muhammad Abid Hussain v. The State* (2025 SCMR 721) which underscored the significance of procedural compliance during narcotics recoveries and held that any procedural irregularities create reasonable doubt, warranting bail at the earliest stage. Similarly, *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934) reiterated that in cases hinging solely on police testimony where procedural safeguards such as video recording are absent, the benefit of doubt must be extended to the accused at the bail stage. An unreported order in Constitutional Petition No. D-729 of 2025 also supports the proposition that technical lapses must be viewed critically, especially in bail applications concerning CNS offences.

5. The learned Deputy Prosecutor General opposes bail on the grounds that the offence is serious, the statute categorizes it as non-bailable, and the large quantity of narcotics recovered demands stringent deterrent

action. While appreciating the gravity of the offence, the Court notes that statutory provisions explicitly require the minimum sentence to be seven years, thus falling short of the ten-year bar that would ordinarily make bail refusal obligatory. This statutory nuance is critical in balancing the fundamental right to liberty against state interest in curbing narcotics trafficking.

6. Upon careful examination of the record, arguments, and the settled law, the Court finds the prosecution's case suffering from significant procedural infirmities. The absence of private mashirs during recovery and the non-preparation of video recording as mandated critically impair the evidentiary value of the seizure, raising substantial doubt on the reliability of the prosecution's case. The statutory framework and judicial precedents converge to affirm that where the minimum sentence prescribed is below ten years, bail should be granted as a matter of right, unless the facts and circumstances strongly indicate otherwise.

7. Therefore, this Court exercises its discretion in favor of the applicant. The bail application is allowed, subject to the applicant furnishing a solvent surety in the sum of Rs. 100,000/- (One Lac) and executing a P.R. bond of the like amount to the satisfaction of the learned trial court.

8. It is clarified that these observations are tentative and strictly confined to bail proceedings without prejudice to the merits of the case, which shall be decided after full trial and evidence.

J U D G E