

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application No.2330 of 2025

Date	Order with signature of Judge
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FOR HEARING OF BAIL APPLICATION

30.9.2025

M/s. Nusrat Ali Shah/ Imran Ali Mithani/ Mohsin Khan Khokhar,
advocates a/w applicant Wajid son of Abdul Wahid

Dr. Syed Fiaz ul Hasan Shah, J. – Through this Bail Application, the applicant/ accused seeks post arrest bail in crime No.213/2025 registered at PS Baghdadi, South, Karachi under Sections 6/9(3)(b) of Sindh Control of Narcotics Substances Act, 2024.

2. Facts are incorporated in the FIR and impugned order and do not need to be reproduced for the purposes of deciding the bail application.
3. Counsel for applicant contends that the mandatory requirement of video recording in the cases particularly with regard the provincial statute controlled under Sindh Control of Narcotics Substances Act, 2024 is essentially required. However, in the present case, neither in the contents of FIR nor in the memorandum of arrest and recovery of the alleged narcotics, it has not been mentioned that the video recording has been conducted. Learned counsel further contends that the offence does not fall within the prohibitory clause of Section 497 CrPC. Challan has already been submitted before the learned trial Court and applicant is no more required for the purposes of investigation. On the other hand, learned Deputy Prosecutor General Sindh strongly opposed the bail application and states that the video recording has been referred in the memorandum of inspection at the place of incident and chemical examination report is affirmative and this is a heinous crime.
4. Heard counsel for applicant and learned Deputy Prosecutor General and with their assistance perused the record.
5. I have considered the contention of counsel for applicant that the essential requirement of video recording in terms of Section 17(2) of Sindh Control of Narcotics Substances Act, 2024 has not been referred in the FIR nor in the statement of PWs, nor in the memorandum of recovery and arrest. The prosecution has only produced the video recording at the time of inspection of the Crime Investigation Officer, which loses the credibility of the instant video.

6. It is imperative to interpret Section 17 of the Sindh Control of Narcotic Substances Act, 2024 in light of its legislative intent and constitutional safeguards which has been enacted keeping into account the findings of the Hon’ble Supreme Court of Pakistan. This provision addresses exigent circumstances where law enforcement agencies, acting without prior arrest or search warrants, receive credible information regarding the concealment of narcotic substances in any building, premises, or conveyance. While the law permits immediate action in such scenarios, it simultaneously imposes a mandatory procedural safeguard under Section 17(2) SNCS, 2024, which reads:

“Video recording of all raids, seizures, inspections and arrests shall be made by the officer in charge of such operation.”

7. This requirement is not a mere procedural formality but a substantive obligation designed to ensure transparency, accountability, and evidentiary integrity. A narrow or literal reading of Section 17(2), divorced from its contextual purpose, would defeat the legislative safeguards embedded within the broader framework of the Act.

8. The evidentiary value of such video recordings is further reinforced by the provisions of the **Qanun-e-Shahadat Order, 1984**, particularly:

- a. **Article 85** (*Electronic documents*): Recognizes the admissibility of electronic records, including video recordings, as evidence, provided they are authentic and relevant to the facts in issue.
- b. **Article 87** (*Relevancy of evidence*): Establishes that any fact which supports or rebuts the existence of a material fact in issue is relevant and admissible.
- c. **Article 129(g)** (*Presumption as to evidence withheld*): Allows the Court to presume that evidence not produced, which could be and is expected to be available, would be unfavorable to the party withholding it.

9. In the present case, the absence of video footage—despite the statutory mandate under Section 17(2) and the availability of recording devices—raises a presumption under Article 129(g) that such evidence, if produced, may not have supported the prosecution’s version.

10. In view of the above, Section 17(2) of *ibid* Act must be construed as a mandatory safeguard, not merely directory, especially where the liberty of an individual is at stake. Its compliance serves as a bulwark against arbitrary exercise of power and ensures that prosecutions are grounded in verifiable and transparent procedures. Failure to adhere to this statutory obligation, particularly in cases where

no warrant was obtained, materially affects the evidentiary value of the recovery and warrants judicial scrutiny at the bail stage.

11. The prosecution has registered the case under SCNS, 2024, however, I am unable to find the video recording of the Raiding and searching police officials at the crime scene about the alleged recovery of Narcotics. The Hon'ble Supreme Court of Pakistan, in *Zahid Sarfaraz Gill v. The State* [2024 SCMR 934], emphasized the evidentiary utility of video recordings in narcotics cases:

“If the police and ANF were to use their mobile phone cameras to record and/or take photographs of the search, seizure and arrest, it would be useful evidence... It may also prevent false allegations being levelled against ANF/police that the narcotic substance was foisted upon them for some ulterior motives.”

12. In cases involving narcotic offences, the prosecution's witnesses predominantly comprise personnel from the Anti-Narcotics Force (ANF) or the Excise Police or the police—individuals who invariably possess mobile phones equipped with cameras. Typically, the number of witnesses present during the arrest and seizure is limited, and they are almost exclusively government functionaries. Despite this, trials are frequently subjected to undue delays, prompting accused persons to pursue bail sequentially through the trial court, the High Court, and ultimately the Supreme Court. The Hon'ble Chief Justice observed that if law enforcement officials were to utilize their mobile phone cameras to document the search, seizure, and arrest—either through photographs or video recordings—such evidence would materially assist in corroborating the accused's presence at the crime scene, their possession of contraband, and the procedural integrity of the search and seizure. Moreover, such documentation could serve as a safeguard against allegations of mala fide conduct, including claims that narcotics were planted to falsely implicate the accused.

13. This observation underscores the jurisprudential shift toward technological integration in criminal procedure, particularly in cases susceptible to abuse of authority. The absence of such video evidence in warrantless operations raises legitimate concerns regarding the credibility of the recovery and the possibility of mala fide intent.

14. In the present matter, upon conducting such tentative assessment and examining the statutory framework, it is evident that the case does not fall within the prohibitory clause of Section 497 of the Criminal Procedure Code. Accordingly, the considerations for grant of bail remain governed by the settled principles of law and judicial discretion.

15. Needless to state that the observations recorded above are tentative in nature and the trial Court shall not be influenced from it. It is clarified that the observations made hereinabove are tentative in nature and shall not prejudice the

trial Court, which shall decide the case strictly on its merits and in accordance with law.

In view of the above, the applicant has made out a case for consideration of post arrest bail and he is admitted for post arrest bail in the above referred crime subject to his furnishing solvent surety in the sum of Rs.100,000/- and PR bonds to the satisfaction of the Nazir of this Court. Instant bail application is disposed of in the above terms.

JUDGE

asim/PA