IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. D-164 of 2025

Before:
Mr. Justice Amjad Ali Bohio, J.
Mr. Justice Khalid Hussain Shahani, J.

Applicant	:	Moharram Khan @ Khan s/o Ashique, Gopang *Through* Mr. Aqleem Hyder, Advocate
The State	:	*Through* Syed Sardar Ali Shah Jillani, Addl. P.G
Date of Hearing	:	17.12.2025
Date of Order	:	17.12.2025
Reasons recorded on	:	19.12.2025

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O R D E R

KHALID HUSSAIN SHAHNI, J.— Applicant Moharram Khan @ Khan, seeks post arrest bail in a case bearing crime No.178 of 2025, for offence punishable under Section 9(1) 3(c) of SCNS Act, 2024 registered at Police Station Kumb, District Khairpur. Earlier, his bail plea was declined by the Court of learned Additional Sessions Judge-I/(MCTC), Khairpur vide order dated 08.11.2025.

2. The facts leading to the arrest of the applicant as narrated in the FIR filed on 12.09.2025 are that the complainant, SIP Ghulam Mustafa Jalbani whilst patrol, reached near village Muhammad Ramzan Mehrani, received spy information that one person was coming from Chandia curve Kumb, having black colored shopper in his right hand, upon receipt of such information complainant along with his sub-ordinates proceeded towards pointed place, where reached at about 1600 hours and found a person coming from southern side, he upon noticing the police party, attempted to escape but was apprehended at the distance of 10/15 paces. Upon search, the shopper contained *charas,* in shape of two big and a small pieces, weighing 2000 grams; out of which 20 grams of *charas* from each piece was separated for chemical analysis. Such memo of arrest and recovery was prepared. Consequent upon; case was registered *inter alia* on the above facts.

3. We have extensively heard the arguments of the learned advocate for applicant and learned Addl. P.G for the State and meticulously perused the record.

4. Regardless to the quantity involved in the above said case, it is imperative to note that police is continuously & bluntly violating the stipulated provisions of Act i.e. Sindh Control of Narcotics Substance Act, 2024 which specifically provides the mandatory requirements of doing a particular act, wherein the arresting officer during operation must have to shoot video or photographs of arrest, recovery or seizure. In the contemporary era, technological devices capable of recording video evidence are ubiquitously available and are carried by virtually every police and law enforcement officer. Modern smart phones are equipped with built-in cameras. Motor vehicles utilized by law enforcement agencies are frequently fitted with edge-cameras or dashboard-mounted recording devices. The collection of photographic and video graphic evidence of police operations is, therefore, not merely feasible but readily practicable. Notwithstanding, this practical availability and the statutory mandate, the investigation record before this Court is bereft of any video or photographic documentation of the arrest, seizure, or recovery proceedings in the instant case. This conspicuous absence of evidence, which could reasonably have been obtained and preserved, constitutes a material and inexplicable departure from the statutory requirement.

5. Moving ahead, the legislative intent embedded within the SCNS Act, 2024 (as amended in 2025), particularly sections 16, 17, 17(2), 35(1) and 35(2) holds proprietary. This is not a mere procedural formality but a substantive obligation designed to ensure, transparency in police conduct; accountability to law; evidentiary integrity and reliability; prevention of false implications and police abuse and advancement of the rule of law. A watershed amendment to the SCNS Act, introduced in 2025, has fundamentally altered the legal landscape governing bail in narcotics cases. Section 35(1), in its original

form, provided an absolute interdiction on bail, stipulating that: *"Notwithstanding anything contained in sections 496 and 497 of the Code, the bail shall not be granted to an accused person charged with an offence under this Act"*. However, Section 35(2) (as amended in 2025) now provides a critical exception, thereby restoring judicial discretion and constitutional safeguards. Section 35(2) provides that *"If it appears to the Special Court or competent court at any stage of the investigation, inquiry or trial, as the case may be, that the accused is arrested under this Act, but there are sufficient grounds for further inquiry into his being guilty, the accused shall, pending such inquiry, be released on bail with sureties..."*. The phrase *"sufficient grounds for further inquiry"* does not require the Court to reach a conclusion that guilt is improbable or that acquittal is likely. Rather, it directs the Court to examine whether the prosecution case, as presently constituted and investigated, exhibits deficiencies or lacunae that necessitate deeper investigation, cross-examination, and trial court scrutiny. Non-compliance with mandatory statutory provisions, such as the video recording requirement under Section 17(2), constitutes a material ground for "further inquiry" because such non-compliance, which undermines the reliability and credibility of the prosecution version; prevents verification of the police account through objective means; raises questions about whether the statutory safeguards were deliberately circumvented and creates a foundation for reasonable doubt regarding the veracity of the alleged recovery.

6. It is unfortunate to observe that, despite the clear mandate of statute and constitution, law enforcement agencies have, in numerous instances, been found to disregard mandatory procedural requirements. This represents not merely a technical departure but a mockery of law itself. It falls upon this Court, as the guardian of constitutional rights and the custodian of justice, to ensure that such transgressions do not go unheeded and that the rule of law is vindicated in practice, not merely in theory.

7. The Honorable Supreme Court of Pakistan in the landmarks judgments of *Zahid Sarfaraz Gill v. The State* [2024 SCMR 934] and *Muhammad Abid Hussain v. The State* [2025 SCMR 721] have collectively establish that procedural fairness, technological evidence collection, and constitutional protections form the foundational pillars upon which narcotics prosecutions must rest, ensuring that neither the innocent are wrongfully convicted nor the guilty escape accountability through shoddy investigation.

8. For the foregoing reasons, we are/were of the considered opinion that the applicant is/was entitled to bail pending further inquiry into the allegations against him. Accordingly, the bail application is/was allowed and applicant was admitted to bail, subject to furnishing solvent surety in sum of Rs.100,000/- (One Hundred Thousand Rupees only) along with P.R Bond of like amount to the satisfaction of learned trial court vide short order dated 17.12.2025. Needless to mention that above assessments are tentative in nature and shall not affect the merits of trial. These are the detailed reasons thereof.

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