

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Bail Appln. No.100 of 2025

Applicant

Muhammad Faisal. : through Mr. Muhammad Ali Naper,
Advocate.

The State : through Mr. Zulfiqar Ali Jatoi,
Addl.P.G. Sindh for State.

Date of hearing. : 07.04.2025

Date of Order. : 07.04.2025

ORDER

Ali Haider 'Ada', J. Through this bail application, the applicant seeks post-arrest bail in Crime No. 214/2024, registered at Police Station C-Section, Sukkur, for offences punishable under Section 9(c) of the Control of Narcotic Substances Act, 1997. It is submitted that the applicant had earlier approached the learned trial court for the grant of post-arrest bail, but his application was dismissed.

2. As per FIR on 14.10.2024, at 2100 hours, the applicant was arrested by a police party headed by ASI Mumtaz Ali Pathan on being found in possession of 1120 grams Charas in one big and small shape of piece and cash of Rs.50/50- (Total Rs.100/-) near Lans-Down Bridge in presence of mashirs, namely, PC Abdul Hafeez and and PC Javed Ali Shah under memo for which he was booked in the instant case.

3. Learned counsel for the applicant submits that the applicant has been falsely implicated in this case due to political rivalry. He further contends that the alleged place of incident is a busy public area; however, the police failed to associate any private or independent person to corroborate the alleged recovery, which form serious doubt on the prosecution's version. It is further submitted that all the witnesses cited in the case are police officials and thus, there is no likelihood of the applicant to tampering with the prosecution evidence. Moreover, the challan has already been submitted before the trial court, and the applicant is no longer required for the purposes of investigation. It is, therefore, argued that the case of the applicant falls within the ambit of further inquiry as contemplated under Section 497(2) Cr.P.C.

4. On the other hand, the learned Additional Prosecutor General supports the order passed by the learned trial court and submits that there is no *mala fide* on the part of the police in implicating the applicant in the present case. It is further contended that charas has been recovered from the possession of the applicant and as such, he is not entitled to the concession of bail at this stage.

5. Heard the learned counsel for the applicant, Additional Prosecutor General and perused the material available on record.

6. Firstly, according to the prosecution, the FIR was handed over to the Investigating Officer on the same day, whereas he visited the place of incident on the following day, i.e., 15-10-2024. Thereafter, he recorded the statements u/s 161 Cr.P.C of the recovery witnesses, who were also shown as mashirs of the memo of inspection of the place of incident. This fact has also been affirmed by the learned Additional Prosecutor General, as the case diary dated 15-10-2024 reflects the same situation. However, upon perusal of the statements u/s 161 Cr.P.C of the recovery witnesses/mashirs, it is noted that not a single word is mentioned in their statements indicating that they visited the place of incident or that the Investigating Officer had appointed them as attesting witnesses for the preparation of the memo. Therefore, at this stage, tentatively, such variant is relevant for consideration.

7. In the present case, the description of the place of incident indicates that it occurred in a busy area; however, the police have failed to provide any explanation as to why independent witnesses were not cited at the time of recovery or even during the inspection of the place of incident. It is noteworthy that while Section 25 of the Control of Narcotic Substances Act excludes the application of Section 103 Cr.P.C., the police are still required to provide cogent reasons for not involving independent witnesses. In this regard, the Honourable Supreme Court, in the case of *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934), held **that** “*we are aware that section 25 of the Act excludes the applicability of section 103 of the Code of Criminal Procedure, 1898 which requires two or more respectable inhabitants of the locality to be associated when search is made. However, we fail to understand why the police and members of the Anti-Narcotics Force (‘ANF’) do not record or photograph when search, seizure and/or arrest is*

made. Article 164 of the Qanun-e-Shahdat, 1984 specifically permits the use of any evidence that may be become available because of modern devices or techniques and its Article 165 override all other laws.”

8. It is also pertinent to note that the prosecution's story is primarily based on the recovery of two slabs of charas. However, the prosecution has failed to specify the weight of each individual slab. While it is mentioned that the two slabs collectively weighed 1120 grams, the omission of the weight of each slab individually constitutes a flaw in the case.

9. It is also true that the witnesses cited in the case are all police officials and therefore, there is no likelihood of the applicant influencing or tampering with their evidence. In support of this disceptation, reliance is placed on the case law: *Muhammad Yousif Jatoi v. The State (2025 MLD 128)*, *Ismail v. The State (2023 MLD 942)*, and *Ali Khan v. The State (2022 PCrLJ 690)*, wherein it is held that..."
“...Besides this, all the prosecution witnesses are ANF officials, therefore no question does arise for tempering the evidence at the hands of applicant, hence, further detention of applicant in jail would not serve the purpose and till then the case of applicant requires further probe.”

10. In view of above, I am of the considered view that applicant/accused has been able to make out a case for grant of bail. Accordingly, instant bail application is allowed. The applicant/accused, namely, **Muhammad Faisal Khalidi** is granted post-arrest bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees One lac) and PR bond in the like amount to the satisfaction of the trial Court.

11. Needless to mention here that observation made herein above are tentative in nature and trial Court may not be influenced of the same in any manner and shall decide the case on its own merits as per evidence and the material ought to be made available before it.

12. Bail application stands disposed of in the above terms.

J U D G E

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