

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH CIRCUIT COURT**  
**MIRPURKHAS**  
B.A No.S-155 of 2024

*(Muhammad Qazafi Vs. The State)*

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**DATE**      **ORDER WITH SIGNATURE OF JUDGE**

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Date of hearing & Order 05.08.2024

Mr. Tarique Mehboob, Advocate for the applicant

Mr. Shahzado Saleem, A.P.G Sindh

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**ORDER**

**Adnan-ul-Karim Memon, J.** The Applicant Muhammad Qazafi is seeking post-arrest bail in F.I.R No.95 of 2024 for the offense under section 9 (i) 3-C of the CNS Act at Police Station Sanghar. His earlier bail plea was declined by the trial court vide order dated 12.7.2024 on the premise that the applicant had been arrested on the spot and 2200 grams of charas had been recovered from his possession.

2. Learned counsel for the applicant/accused argued the case against the applicant/accused is false, fabricated, based on malafide, and concocted. He also claimed that no such incident had taken place, but in fact, the applicant/accused had obtained the car from his neighbor to attend the marriage ceremony and after attending the marriage ceremony, when he dropped his family members outside his house in the street meanwhile complainant along with his staff stopped the car of applicant/accused and brought at the police station whereby foisting alleged charas, lodged false case against applicant/accused. He further argued that such incident of arresting the applicant/accused from his house has been recorded in a CCTV camera installed in the street and the tracker report of the car also does not show any movement of the car at the alleged place of incident. He also argued that the alleged place of incident is situated on the main Sanghar-Hyderabad road despite that the complainant did not associate any private person as a witness, which factum requires further inquiry. He further argued that the applicant had Ice Factory and Sanghar police usually demanded Ice as well as a bribe from him; and on the day of the alleged incident, Sanghar police demanded a huge bribe, which the applicant refused, therefore, falsely implicated him in this case. Learned counsel annexed a photocopy of the tracker report and prayed that the applicant may be enlarged on post-arrest bail in the subject crime.

3. Learned Additional Prosecutor General opposed the grant of bail to the applicant on the premise that the applicant/accused had been arrested on the spot and 2200 grams of charas had been recovered from his possession by the police party headed by the complainant SIP Lal Bahadur of P.S Sanghar. He added that the quantity of alleged charas falls u/s 9(i)(3) (c) of the CNC (amended) Act and the punishment of such offense is extended up to 14 years, which falls within the prohibitory clause of section 497 Cr.P.C. he argued that sentences not only falls within prohibitory clause of section 497

Cr. P.C but also attracts the bar contained in section 51(1) of the Ibid Act. As per the prosecutor, the material available on record is sufficient to connect the applicant/accused with the commission of the offense. He further argued that the applicant/accused has not made out the case for further inquiry and his application may kindly be dismissed.

4. Before dealing with the merits of the respective contentions, it would be appropriate to refer to the guidelines given by the Supreme Court, while considering the application for grant of bail. The guidelines are that while deciding a bail application this Court has to consider the facts of the case narrated in the FIR, statements recorded under Section 161 Cr.P.C., other incriminating material against the accused, nature, and gravity of charge and pleas raised by the accused. In this regard, I am fortified by the decision of the Supreme Court rendered in the case of Shahzad Ahmed Vs. The State [2010 SCMR 1221]. Keeping in view the above principle, the learned counsel for the parties has been heard and the record has been perused.

5. The accusation against the applicant is that on 24.04.2024, he was arrested by Police and recovered four big and one small pieces of charas, which weighed 2200, such F.I.R. was lodged at Police Station Sanghar. The alleged narcotics were dispatched to the Chemical Examiner on the next date i.e. 25.04.2024; and, such chemical report dated 21.05.2024 is positive and also supports the prosecution version. Even, though I have perused the aforementioned test report, however, there appears a remarkable difference between the gross weight i.e. 2200, and the net weight of charas which weighs 2194 grams. In such circumstances, the question is whether the applicant can be saddled with possession and transporting the narcotics in terms of 9(i)(3) (c) of the CNS (amended) Act because the applicant has been shown to have been arrested from a car and police allegedly found shopper bag from the car containing purported charas; whereas the applicant has produced the car movement record/tracker report with the narration that the car does not show presence of car at the alleged place of incident. Besides the defense has also leveled allegations against one of the prosecution witnesses of his malice in the matter who has been under suspension due to his involvement in such sort of affairs.

6. In such cases, the false implication can be judged by the trial court as the prosecution had sufficient time to comply with the directions of the Supreme Court in the case of Zahid Sarfarz Gill v The State 2024 SCMR 934 where it has been held that the police and members of the Anti Narcotic Force failed to record or photograph at the time of search of the accused when search, seizure or arrest is made, as the law permits the use of modern device or techniques, however in the present case the police has failed to apply the test so directed by the Supreme Court therefore in all cases about Narcotics, this modern device is required to be used in future cases without fail in terms of the ratio of the decision of the Supreme Court in the case of Zahid Sarfaraz Gill.

7. No doubt, the offense of trafficking the narcotic is a heinous one and affects society at large but it is a settled principle of law that every case is to be decided on its facts and circumstances. Again, in the case of Deputy Director ANF Karachi vs Syed

Abdul Qayum, reported in **2001 SCMR 14**, which was later, the Supreme Court ruled that despite the provisions contained in Section 51 of the Control of Narcotic Substances Act, 1997, the Sessions Court and High Court have the power to grant bail. For the sake of convenience and ready reference, the relevant part of the judgment is given below:

“Moreover, this Court in the case of Gul Zaman V the State reported in 1999 SCMR 1271, has elaborately dealt with the application of sections 496, 497, and 498 Cr.P.C. in view of the bar contained in section 51 of the Act and it has been unanimously held that despite the provisions contained in section 51 of the Act, the Sessions Court and High Court have the power to grant bail.”

8. Since the judgment rendered by the Supreme Court directed to record or take photographs at the time of search of the accused when search, seizure, or arrest is made as the law permits the use of modern devices or techniques but the police failed and neglected to adhere the dicta laid down by the Supreme Court, which is a constitutional command under Article 199 of the Constitution, therefore, appreciating whether the applicant was arrested with charas from his trousers requires deeper appreciation.

9. In view of the above, the arguments of the learned Prosecutor that the bar contained in Section 51 (1) of CNSA is applicable is without any substance in the light of the ratio of the judgment rendered by the Supreme Court in the case of Zahid Sarfarz Gill supra as the prosecution failed to comply the law laid down by the Supreme Court, which was decided on 22.11.2023 whereas the subject FIR was registered on 24.04.2024, which shows that either prosecution is ignorant the law laid down by the Supreme Court or deliberately avoiding to adhere the principle of law, besides the trial Court has completely ignored the judgment of the Supreme Court, which apathy, therefore, the benefit should go to the accused at the bail stage without touching the merits of the case.

10. I have noticed that the cases of Ateebur Rehman v. The State (2016 SCMR 1424), which involved the recovery of 1014 grams of heroin, and Aya Khan and another v. The State (2020 SCMR 350), which involved the recovery of 1100 grams of heroin, and bail was granted by the Supreme Court in both cases.

11. In principle bail does not mean acquittal of the accused but only change of custody from police to the sureties, who on furnishing bonds take responsibility to produce the accused whenever and wherever required to be produced. On the aforesaid proposition, I am fortified with the decision of the Supreme Court on the case of Haji Muhammad Nazir v. The State (2008 SCMR 807).

12. For what has been discussed above in the preceding paragraphs and the facts and circumstances of the instant case make it a case of further inquiry Accordingly, the applicant Muhammad Qazafi is granted post-arrest bail, in the case arising out of F.I.R No.95 of 2024 for the offense under section 9 (i) 3-C of CNS Act at Police Station Sanghar, subject to his furnishing bail bond in the sum of Rs. 100000/- (One Hundred Thousand Rupees) with one more surety in the like amount to the satisfaction of the Trial Court.

13. The observation recorded hereinabove is tentative and shall not prejudice the case of either party at trial. However, the learned trial Court shall endeavor to examine the complainant positively within one month. If the charge has not been framed, the same shall be framed before the date so fixed by the trial Court, and a compliance report shall be submitted through the Additional Registrar of this Court. The Additional Registrar shall ensure compliance with the order within time.

**JUDGE**

**"Ali Sher"**