

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH CIRCUIT COURT**  
**MIRPURKHAS**  
B.A No.S-135 of 2024

*(Sarfranz @ Gujjar Vs. The State)*

B.A No.S-136 of 2024

*(Sarfranz @ Gujjar Vs. The State)*

B.A No.S-137 of 2024

*(Sarfranz @ Gujjar Vs. The State)*

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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Date of hearing & Order 06.08.2024

Mr. Muhammad Imran Ch. Advocate for the applicant in all bail applications.

Mr. Shahzado Saleem, A.P.G Sindh w/o SIP Umed Ali Rahimoon of P.S Kunri

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**ORDER**

**Adnan-ul-Karim Memon, J.** Through these three separate bail applications, the applicant Sarfranz @ Gujjar is seeking post-arrest bail in F.I.R No.95/2024 under section 324, 353, 34, F.I.R No.96 of 2024 under section 23(1)-A of the Sindh Arms Act 2013 and in F.I.R No.97 of 2024 under section 9 (i) 3-C of the CNS Act registered at same Police Station Kunri. Since, in the captioned bail applications, the applicant is the same and the cases are the outcome of a single transaction, therefore, by this single order I will dispose of these three bail applications.

2. As per the record the applicant's earlier bail applications were declined by the trial court vide separate orders dated 12.06.2024 on the premise that the applicant was nominated in FIR for carrying out a murderous attack upon a police party and was arrested red-handed along with 1025 grams charas and illicit weapon.

3. The applicant is accused of firing upon a police team with a pistol, intending to kill them and obstruct their official duties. In the ensuing exchange of fire, the applicant was injured. Subsequently, an unlicensed pistol with ammunition, an unregistered motorcycle, and 1025 grams of charas were recovered from his possession.

4. The learned counsel for the applicant/accused submits that the police violated Section 103 Cr.P.C. by fabricating a false encounter; that no police officer was injured during the alleged encounter; that the applicant was severely injured, including a knee fracture, and requires proper medical care; that the applicability of Section 324 PPC (causing hurt) is questionable due to the applicant's injuries; that SHO Iftikhar Bajwa has a history of staging fake encounters; that the applicant is in judicial custody and no longer needed for investigation; that Police officers have abused their power and acted as criminals rather than law enforcers; that fake encounters are extrajudicial killings disguised as lawful actions; that Police officers must refuse illegal orders to stage fake

encounters or face criminal charges themselves. He prayed that the applicant may be granted bail in all cases as discussed supra.

5. The learned Additional prosecutor submitted that as per the memo of arrest and recovery dated 11-05-2024 which explicitly shows that he carried out a murderous assault upon the police party along with his accomplices and the offense under section 324 P.P.C falls within the prohibitory clause of S.497 Cr.P.C., he added that the applicant was arrested red-handed in possession of the illicit weapon and huge quantity of narcotics, for which separate FIRs have been lodged against him. He prayed for the dismissal of the bail application.

6. 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.

7. The FIR alleges a close-range encounter where only the applicant sustained injuries, suggesting ineffective firing on his part. The medical report confirms a firearm injury to the applicant's knee. With no conviction history in criminal cases and the investigation complete, continued detention is unnecessary. Despite being in custody, the prosecution has failed to present any witnesses, though all are police officers. There is no risk of tampering with evidence as all witnesses are police personnel. Besides the offense under Section 353 PPC is bailable with a maximum punishment of two years imprisonment or a fine. The applicability of Section 324 PPC requires further probe by the trial court after examining the witnesses. To determine if an attempt to murder police officers occurred, given the lack of injuries to police personnel and the applicant's knee injury, a thorough examination of evidence is necessary which is only possible if the case is proceeded. The trial court will ultimately decide the matter based on the presented evidence, in such circumstances, the applicant cannot be denied bail solely based on injuries sustained during a purported encounter where no police officer was harmed despite alleged proximity. The recovery of the pistol is questionable as the FIR states it was recovered only without disclosing where from, without clarifying such possession, the case needs further inquiry. Prima-facie, the absence of independent witnesses to the arrest and recovery further casts doubt on the prosecution's version.

8. So far as recovery of narcotics is concerned 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 Narcoic

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*. 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.”

9. 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 during police encounter requires deeper appreciation. 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 Sarfaraz 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 11-05-2024, 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, in such circumstances, 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, therefore the case of narcotics requires further inquiry.

10. 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).

11. Resultantly these applications are allowed and bail is granted to the applicant subject to his furnishing solvent surety in the sum of Rs. 100000/= (Rupees One Hundred Thousands Only) in each case; and, one more surety of like amount as well as PR bond in the like amount to the satisfaction of the trial court.

12. 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”