

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Bail Application No.S-35 of 2025

Applicant: Ghulam Hussain through Mr. Shahnawaz Brohi, Advocate.

Respondent: The State through Mr. Shaharyar Shar, Special Prosecutor ANF.

Date of hearing: 11.02.2025.

Date of decision: 21.2.2025

ORDER

MUHAMMAD HASAN (AKBER), J.- Applicant Ghulam Hussain son of Muhammad Umar seeks post arrest bail in Crime No.39 of 2024 registered at Police Station ANF, Hyderabad, under sections 6, 9-(i), 3(c) of Control of Narcotic Substances Act, 1997. His earlier bail application before the learned Special Court/IV-Additional Sessions Judge, Hyderabad was rejected vide Order dated 09.12.2024, hence this bail application.

2. The allegations against the applicant Ghulam Hussain @ Dilawar is that on 29.09.2024 at 14:00 hours, he was arrested on spy information from the place of incident, with a black colour shopper from which 2 kilogram of charas was recovered.

3. Heard learned counsel for the Applicant and the learned Special Prosecutor ANF and perused the record with their assistance.

4. The learned counsel for the Applicant pleaded bail on the plea of innocence; false implication under *malice*; past clean record (not previously convicted, hardened and disparate criminal); and also on violation of section 103 Cr.P.C. i.e non-association of private witnesses as *mashirs* of recovery

and arrest. Lastly, non-recording of video and pictures during the process of recovery was also pleaded based upon 2024 SCMR 934. Reliance was also placed on Orders passed by other single benches of this Court in the cases 2022 PCr.L.J 690 and 2022 MLD 1538.

5. The learned Special Prosecutor ANF vehemently opposed bail while relying upon the fact that the applicant was arrested red-handed and that samples were diligently sent to laboratory within 72 hours. While taking support from the Judgment reported in 2020 SCMR 1257, he also relied upon section 51 of the CNS Act 1997 and pleaded that cases of narcotics have larger implications being a crime against society. In response to the case 2024 SCMR 934, he argued that there was no mandatory requirement of recording video and pictures during raids, nor was there any rule or notification to this effect, but such were simply desired suggested observations in the said case, and the same could not be considered as violation of any mandatory provision of law. Reliance was also placed on 2023 SCMR 573 and 2017 PCr.L.J. 1012.

6. The guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence to be produced by the prosecution before the trial Court. In the present case, the quantity recovered is 2 kilogram of charas and the minimum sentence prescribed for the alleged offence by way of amendment is nine years, under section 9(3)(c) of the Act 1997. The applicant was arrested red-handed and samples were diligently sent to laboratory within the prescribed time. Unless the Court at the very outset is satisfied, that the charge against the accused appears to be false or groundless, the discretion under section 497 Cr.P.C., cannot be exercised with regards to offences, which are punishable with death or imprisonment for life. Such is the principle settled in the case of '*Javed Khan Vs. The State*', 2010 SCMR 1989.

7. It must also be carefully followed that deeper appreciation of evidence is not permissible at this stage, while deciding bail application, as held in the

case of *Saleh Muhammad* (PLD 1986 Supreme Court 211) and '*The State Vs Zubair and 4 others*' (PLD 1986 Supreme Court 163).

8. As regards the ground of non-association of private witnesses in the process, section 25 of CNS Act specifically excludes applicability of section 103, Cr.P.C. Such conscious exclusion of section 103 Cr.P.C. by the legislature in the cases of narcotics, actually highlights lack of cooperation and willingness from private witnesses being associated in the process of recovery, as a usual conduct symptomatic of social apathy towards civic responsibility. It is held by the apex Court in the case of '*Muhammad Noman Munir*' (2020 SCMR 1257) that members of State functionaries are second to none in their status, and their acts statutorily presumed, *prima facie*, were *intro vires*. This satisfactorily responds to the applicant's objection to non-association of private witnesses in the process of arrest and recovery in the present case. Besides, the same has also been duly explained in the F.I.R.

9. Furthermore, special care and caution is required while dealing with the cases of narcotics, which is not only a menace and a serious crime against the society, but it even brings bad reputation to the country globally. It is for this reason that liberal exercise of discretion under section 497 Cr.P.C. in cases of recovery of contraband stuff in huge quantity has been deprecated, as guided in the cases of '*Bilal Khan*' (2021 SCMR 460) and '*Muhammad Noman Munir*' *supra*.

10. On the count of false implication, neither any reason nor any specific allegation of animosity against the raiding party has been provided which could even remotely suggest enmity or ill-will of the force for falsely involving the applicant, as alleged. Nevertheless, the applicant's claim of false implication is an issue that cannot be attended without going beyond the barriers of tentative assessment, an exercise which is prohibited by law. Reliance in this regard is placed on '*Noor Khan Vs. State*' (2021 SCMR 1212).

11. Lastly, charas recovered in the instant case is 2 kilogram, whereas Bail has been consistently declined by this Court in identical circumstances, even for lesser quantities and reliance in this regard can be placed on 2024 YLR 1061, 2023 YLR 1264, 2022 MLD 998 and 2022 MLD 735, in addition to the case already discussed *ibid*. Reverting to the judgments relied upon by the learned counsel for the applicant, there either appeared substantial delay in sending the samples for testing in such cases, or the principles discussed hereinabove were not applied, hence in addition to being distinguishable, the same are also inapplicable to the facts of the present case.

12. Red-handed seizure of considerable quantity of the contraband; timely sending of the samples to laboratory; absence of animosity and ill motives; applicability of section 25 of the Act; the nature of the crime and its serious implications on overall society; and the legal jurisprudence on the subject as developed so far, are the reasons which have convinced me to reach to the *prima facie* assessment that reasonable grounds exist to connect the applicant with the alleged crime, which brings him within the remit of 'Prohibition, as contemplated by section 51 of the Control of Narcotic Substances Act, 1997; thus, no case of further inquiry is made out which could entitle him to bail. Additionally, the calendar of witnesses appears to be short suggesting likelihood of early conclusion of trial without unnecessary delay. The learned trial Court, shall not get influenced in any manner by any observations recorded herein, which are purely tentative in nature.

13. For the foregoing reasons, the instant bail application is dismissed.

J U D G E