

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No.132 of 2025

Date: Order with signature(s) of the Judge(s)

For hearing of bail application.

20th February 2025

Mr. Ghulam Asghar Khuhro, advocate for Applicant/accused.
Mr. Muhammad Raza, Additional Prosecutor General for
State.

Jan Ali Junejo, J.-- The present Criminal Bail Application has been filed on behalf of the Applicant/Accused, who is seeking post-arrest bail in connection with a case stemming from FIR No. 1327 of 2024, registered at P.S. Site Superhighway Industrial Area (SSHIA), Karachi, under Section 9(1)(3-c), of the Control of Narcotics Substances (Amendment) Act, 2022. The Applicant/Accused initially approached the learned Sessions Court by filing Bail Application No. 5482 of 2024, which was subsequently dismissed by the Court of the learned IInd Additional Sessions Judge, Malir, Karachi, vide Order dated 15-11-2024.

2. The facts relevant to the present criminal bail application are as follows:

“On 11-11-2024, at about 07:00 hours, SIP Mazhar-ul-Haq, along with police officials PC Feroze Ahmed and DPC Ghazi Khan, was patrolling in a government vehicle when they received a tip-off about Muhammad Rafeeq selling chars near Preshan Chowk, Faqira Goth. Acting on this information, they reached the location at 09:30 hours, identified and apprehended the suspect. Due to the absence of private witnesses, police officials acted as witnesses. A search of the accused led to the recovery of a white shopper containing a dark brown packet labelled “SNICKER”, which upon opening, revealed Chars wrapped in yellow tape, weighing 1,110 grams. Additionally, Rs. 350/- was found in his possession. The recovered contraband was sealed on the spot, and the accused was taken to the police station, where an FIR was lodged under Section 9(1)(3-c) of the 2022 Act”.

3. The learned counsel for the Applicant has argued that the Applicant has been falsely implicated due to previous enmity with law enforcement or other ulterior motives. It is further contended that no independent witnesses were present, despite the alleged incident occurring in a public area (*Preshan Chowk*), raising doubts about the prosecution's case. It is further contended that Section 103 of the **Criminal Procedure Code (Cr.P.C.)** requires independent witnesses for searches and seizures, which was ignored. It is further argued that the failure to secure neutral witnesses casts doubt on the legitimacy of the alleged recovery. He further argued that the tip-off was received at 07:00 hours, and the accused was arrested at 09:30 hours, but the FIR was lodged after considerable delay without justification, delay in FIR registration suggests possible fabrication and manipulation of evidence. It is further contended that the recovered *chars* (1,110 grams) does not conclusively establish commercial intent, which is essential for a conviction under Section **9(1)(3-C)** of the **2022 Act**. It is further contended that the applicant has no prior criminal history of conviction. Given the **lack of independent witnesses, procedural irregularities, absence of commercial intent, and fundamental rights of the accused**, it is prayed that the applicant deserves **bail as a matter of right, not concession**. The case lacks substantial evidence, and keeping the accused in custody before trial would amount to **unjustified pre-trial punishment**. Thus, it is **prayed that the Hon'ble Court may be pleased to grant bail** to the accused in the interest of justice.

4. The learned Additional Prosecutor General has argued that a *prima facie* case is clearly established against the Applicant/accused. The learned Additional Prosecutor General argued for the dismissal of the bail application, contending that the applicant/accused has been explicitly nominated in the FIR with a specific role in possessing a substantial quantity of *chars*. It was further submitted that the accused has a prior history of similar offenses, demonstrating a pattern of criminal conduct. The nature of the offense affects society at large, making it a serious crime warranting strict legal action. Moreover, the offense carries a

punishment of up to 14 years and falls within the prohibitory clause of Section 497(1) of the Cr.P.C., which restricts the grant of bail in such cases. Given these circumstances, the accused is not entitled to bail, as no exceptional grounds exist to warrant any leniency.

5. I have given due consideration to the arguments advanced by the learned counsel for the applicant/accused as well as the learned Additional Prosecutor General. Furthermore, I have meticulously examined the material available on record with utmost care and judicial prudence. Upon a thorough perusal of the record, it transpires that the prosecution asserts that the applicant/accused was apprehended in flagrante delicto while in possession of a substantial quantity of contraband, specifically *charas* weighing 1,110 grams. This quantity squarely falls within the ambit of Section 9(1)(3)(c) of the **Control of Narcotic Substances Act, 1997** (as amended in 2022), which prescribes a punishment of imprisonment extending up to fourteen years but not less than nine years, in addition to a fine ranging from a minimum of eighty thousand rupees to a maximum of four hundred thousand rupees. The offence in question falls within the prohibitory clause of **Section 497(1) of the Code of Criminal Procedure, 1898 (Cr.P.C.)**, thereby precluding the applicant/accused from claiming bail as a matter of right or concession. In Case of *Noor Khan v. The State (2021 SCMR 1212)*, it was held by the Honourable Apex Court that: *“Red-handed with seizure of considerable quantity of the contraband squarely brings petitioner’s case within the remit of Prohibition, contemplated by section 51 of the Control of Narcotic Substances Act, 1997; his claim of false implication is an issue that cannot be attended without going beyond the barriers of tentative assessment, an exercise prohibited by law”*. Reference may also be made to another Case of *Dolat Khan v. The State and others (2016 SCMR 1447)* wherein it was held by the Apex Court that: *“The petitioner was apprehended at the spot by the raiding party and as per the FIR he himself handed over two Nos. packets containing Charas and opium to the complainant (SI). Learned counsel for the petitioner has not been able to refer to anything from the record which could suggest that the complainant or any other member of the raiding party had any animus*

against the petitioner. The case of the petitioner falls within the prohibitory clause of section 497 of the Code of Criminal Procedure. In this view of the matter coupled with the fact that huge quantity of narcotics has been recovered from his possession, petitioner is not entitled for the concession of bail”.

6. Additionally, the applicant/accused has been previously involved in multiple cases of similar nature, i.e.:

- FIR No. 931/2000, P.S. SSHIA, under **Sections 6/9(c) of the CNSA, 1997**
- FIR No. 1743/2022, under **Section 6/9(1)(b) of the CNSA, 1997**
- FIR No. 1161/2023, P.S. SSHIA, under **Section 9(1)(3)(c) of the CNSA, 1997**
- FIR No. 1434/2023, P.S. SSHIA, under **Section 9(1)(3)(c) of the CNSA, 1997**
- FIR No. 421/2024, P.S. SSHIA
- FIR No. 1089/2024, P.S. SSHIA, under **Section 9(1)(3)(c) of the CNSA, 1997.**

7. The applicant/accused has not demonstrated any personal enmity with the complainant/police party, and no mala fide intent on the part of the prosecution has been established. Consequently, it stands prima facie established that the applicant/accused is directly involved in the commission of the offence, which falls under the prohibitory clause of **Section 497(1) Cr.P.C.** and, as such, does not merit the concession of bail.

8. For the reasons set forth above, the instant bail application filed on behalf of the applicant/accused is hereby **dismissed**. The observations made herein are confined solely to the adjudication of this bail application and shall not prejudice the rights of either party at the trial stage.

JUDGE