

Crl. Bail Application No.142 of 2025

For hearing of bail application.

Mr. Nusrat Gul Malik, Advocate for Applicant
Mr. Mumtaz Ali Shah, Deputy Prosecutor General for State

“On 30-7-2024, AETO Harji Mal, along with other excise staff and witnesses Excise Constables Abdul Salam and Mubeen, acted on a tip-off and reached near Disco Bakers, Gulshan-e-Iqbal, Karachi, using government vehicle GS-9904. They apprehended accused Waris S/o. Arsalan, recovering a Vivo phone from his pocket and 500 grams of heroin powder wrapped in yellow tape and a black plastic shopper from his right hand. The heroin was weighed using an electronic scale, sealed in white cloth for chemical examination, and a mushirnama was prepared on the spot, read over, and signed by the witnesses. During interrogation, Waris admitted to supplying drugs on the direction of Saleem S/o. Pir Muhammad. The accused, along with the sealed property, was brought to the Excise Police Station, where the FIR was lodged”.

3. The learned counsel for the Applicant has argued that the Applicant has been falsely implicated due to previous enmity with law enforcement agencies or other ulterior motives. It is further contended that no independent witnesses were present, despite the alleged incident occurring in a public area, 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 offence does not fall within the prohibitory clause of Section 497(1), Cr.P.C. 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 Applicant in the interest of justice.

4. The learned Deputy Prosecutor General has argued that a prima facie case is clearly established against the Applicant/accused. He prayed for 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 *heroin*. The nature of the offence affects society at large, making it a serious crime warranting strict legal action. Moreover, the offence 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 as well as the learned Deputy Prosecutor General. Furthermore, I have meticulously examined the material available on record with utmost care and judicial prudence. Upon a thorough review of the record, it emerges that the prosecution claims the Applicant was apprehended with 500 grams of contraband heroin in his possession. However, the chemical report indicates that while the gross weight of the heroin was indeed 500 grams, the net weight was found to be 490 grams. It remains to be established whether the offence falls under Section 9(6)(1-b) or Section 9(6)(1-c) of the Control of Narcotic Substances Act, 1997 (as amended in 2022). The quantity of heroin involved, although significant, is situated on the threshold of the relevant legal provisions, necessitating further inquiry within the context of Section 497(2) of the Criminal Procedure Code (Cr.P.C.). Notably, the Applicant has no prior criminal record and is a first-time offender. This fact considerably reduces the likelihood of recidivism and suggests that the Applicant does not pose a threat to society or is unlikely to engage in future criminal conduct. In the case of ***Aya Khan and another v. The State (2020 SCMR 350)***, the Supreme Court of Pakistan ruled that: *“Without discussing the merits of the case lest it prejudice the case of one or the other side, suffice it to say that in the FIR or in the recovery memo, nowhere it is stated that whether it was net or gross weight of the narcotics and in this eventuality it becomes a border line case between subsections (b) and (c) of section 9, C.N.S.A., 1997. Thus the benefit of doubt in this aspect shall go to the accused”*. In a similar case, ***Mst. Nazia and another v. The State (2024 MLD 843)***, this Court granted bail to

an accused charged with the possession of 4 kilograms of charas, 2.5 kilograms of ice, and 500 grams of heroin powder, highlighting that the case warranted further inquiry. In light of these circumstances, the applicant is entitled to bail based on the provisions of Section 497(2) of the Criminal Procedure Code (Cr.P.C.).

6. For the reasons outlined above, the current bail application submitted on behalf of the Applicant is granted as prayed. The Applicant is hereby granted bail on the condition that he furnishes a solvent surety of Rs.100,000 (Rupees One Hundred Thousand) to the satisfaction of the learned trial Court, along with a P.R. bond for the same amount. The observations made in this Order are limited to the adjudication of this bail application and will not affect the rights of either party during the trial.

JUDGE

B-K Soomro