

THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No. 301 of 2025

Applicant : Muhammad Asif
through Mr. Shafique Ahmed,
advocate

Respondent : The State
through Mr. Sarfraz Ahmed Mangi
Special Prosecutor ANF

Date of short order : 5th March, 2025

Date of reasons : 7th March, 2025

ORDER

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.45 of 2024, registered at P.S. ANF-II, Karachi, under Section 9(2) Sr. No.5, 14, 15, Control of Narcotic Substances Act, 1997. The Applicant/Accused initially approached the learned Court of Special Judge, CNS-I, Karachi by filing Bail Application in Special Case No.132 of 2024, which was subsequently dismissed by the learned Special Court, CNS-I vide its Order dated 14-01-2025.

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

“On July 13, 2024, at 0010 hours, SI Muhammad Saleem of PS ANF Korangi received information from DHL Operations Manager Asad Mugeem regarding a suspicious parcel booked by ACHME Logistic Karachi for Bahrain. Accompanied by ANF staff, SI Saleem inspected the parcel at DHL’s JIAP office, finding sender and

receiver details both under Muhammad Asif. The parcel contained nine grease guns concealing methamphetamine within piston-like cups, totaling 810 grams. Samples (10 grams each) were extracted, sealed, and labeled for analysis, while remaining items were secured as evidence. DHL staff declined to witness the process, so ANF personnel served as witnesses. The FIR, registered under CNSA 1997 Sections 9(2), 14, and 15, implicates the un-arrested sender and receiver".

3. The learned counsel for the Applicant has argued that there are no reasonable grounds to believe the accused committed the offence, as the case requires further inquiry and the applicant is innocent, falsely implicated by the police for ulterior motives. He further contends that the FIR's narrative is fabricated, uncorroborated, and improbable, noting the applicant's absence from the crime scene, the complainant's failure to provide the alleged caller's phone number, and the lack of DHL staff witnesses. He argues that the applicant's arrest away from the scene and the absence of independent mashirs during recovery—relying solely on police officers—violate Section 103 Cr.P.C, rendering the recovery process suspect. He further asserts that this procedural flaw underscores a risk of manipulation and false implication, given the potential for police misconduct. He contends that the case warrants deeper scrutiny, as the applicant is neither a dangerous criminal nor previously convicted, and all prosecution witnesses are police officials subordinate to the complainant, creating a conflict of interest. He emphasizes that the charges do not attract death, life imprisonment, or a ten-year sentence, and nothing was recovered from the applicant's possession, highlighting the prosecution's failure to involve private mashirs and exposing malafide intent. He further

argues that bail cannot be denied even if the accused absconded, as legal ambiguities must favor the accused in cases requiring further inquiry. Lastly, the learned counsel for the Applicant has prayed for grant of bail to the Applicant.

4. The learned Special Prosecutor for the ANF opposes the bail application, advancing the following contra arguments: He contends that the Applicant is *prima facie* connected to the commission of the offence, as evidenced by credible material on record, including the FIR, witness statements, and recovery proceedings, which collectively establish a strong likelihood of guilt. He asserts that the gravity of the offence under the Control of Narcotics Substances Act, 1997 (CNSA) – which prescribes stringent punishments, including life imprisonment – necessitates strict adherence to the legal presumption against bail in narcotics cases. He argues that the FIR's narrative is neither fabricated nor improbable, as the prosecution has corroborated the applicant's involvement through technical evidence (e.g., call records) and witness testimonies, even if the caller's number or DHL staff witnesses were not explicitly disclosed at this stage. He emphasizes that the absence of the Applicant at the scene of the crime does not absolve liability, as the CNSA criminalizes conspiracy, abetment, and indirect involvement in narcotics trafficking. He further contends that the recovery process, though involving police *mashirs*, complied with procedural safeguards under Section 103 Cr.P.C., as the law permits official witnesses in exigent circumstances where independent witnesses are unavailable or reluctant to participate, particularly in high-risk narcotics cases. He refutes claims of procedural malafides, stating that the prosecution's reliance on police witnesses is justified given the specialized nature of ANF operations and the inherent risks of tampering or intimidation by accused persons in drug-

related crimes. He highlights that the Applicant's alleged role as a key conspirator in a transnational narcotics network renders him a flight risk, given the severe penalties involved and the possibility of influencing witnesses or destroying evidence if released. He counters the assertion of the Applicant's "law-abiding" character by citing intelligence reports and prior surveillance indicating his links to organized crime, even if no prior convictions are recorded. He stresses that the statutory bar under Section 497(2) Cr.P.C applies, as the offence involves a sentence of life imprisonment, and the Applicant has failed to rebut the statutory presumption against bail under Section 497(3) Cr.P.C. He disputes the claim of "further inquiry," arguing that the prosecution has already presented sufficient evidence to establish a prima facie case, and further investigation is underway to uncover the full extent of the Applicant's involvement. He warns that granting bail in such cases undermines public confidence in the justice system and risks perpetuating the narcotics trade, which has devastating societal consequences. Lastly, the learned Special Prosecutor requests the Court to dismiss the bail application to ensure the integrity of the trial and public safety.

5. I have given due consideration to the arguments advanced by the learned counsel for the applicant/accused as well as the learned Special Prosecutor for ANF. Furthermore, I have meticulously examined the material available on record with utmost care and judicial prudence. A review of the case record reveals that the prosecution's case is based entirely on circumstantial evidence rather than direct proof. The Applicant was not present at the time of the alleged recovery of the parcel containing contraband ICE (Methamphetamine), and there is no evidence of his exclusive possession of the substance. The prosecution has neither alleged that the contraband narcotics

were recovered pursuant to any disclosure, identification, or involvement of the Applicant nor adduced credible proof to establish the Applicant's *conscious knowledge* or intentional possession of the narcotic substance. This failure to substantiate a direct nexus between the Applicant and the contraband critically erodes the foundational linkage necessary to implicate him in the alleged offence. Additionally, the lack of corroborative evidence and the absence of statements from DHL officials leave critical questions about the Applicant's involvement unanswered. There also exists a possibility that the Applicant's identity was misused or that an impersonation occurred, warranting further inquiry. The legal principle of "requiring further inquiry" applies when evidence is inconclusive or contradictory. In this case, the prosecution has failed to establish a *prima facie* case strong enough to justify the denial of bail. While narcotics-related offences are indeed serious, the gravity of the offence alone cannot be the sole ground for refusing bail. In Case of *Abdul Manan v. The State (2021 SCMR 1804)*, it was held by the Honourable Supreme Court of Pakistan that: "*Learned counsel appearing on behalf of State after going through the file confirms that there is no connection of the petitioner with the said vehicle and even nothing was recovered from his personal possession or on his pointation. He, however, contends that petitioner was in the vehicle and in the circumstances it can be safely presumed that he had conscious knowledge of the narcotics concealed in that vehicle. and even he attempted to run away from the spot, when the police signalled the vehicle to stop. The question, the petitioner who was not a driver of the vehicle had conscious knowledge of narcotics concealed in the vehicle needs serious consideration, which shall be determined by the learned trial Court after recording evidence. In the circumstances, case against the petitioner calls for further inquiry falling within the ambit of section 497(2), Code of Criminal*

Procedure". In a comparable factual matrix, the Honourable Supreme Court of Pakistan granted post-arrest bail to the accused person in *Hussainullah v. The State & another* (2019 SCMR 1651), wherein the Court underscored the principle that the absence of *exclusive possession* of the narcotic substance, coupled with inconclusive evidence linking the accused to the contraband, constitutes sufficient grounds for bail.

6. Given these circumstances, I am of the considered view that, based on the prosecution's material in its present form, the case falls within the scope of further inquiry as envisaged under Section 497(2) of the Code of Criminal Procedure (Cr.P.C.). In light of the foregoing discussion, I am convinced that the Applicant has successfully established a *prima facie* case for the grant of bail.

7. In light of the foregoing analysis and reasoning, the bail application filed on behalf of the Applicant (accused) is hereby allowed. Consequently, post-arrest bail is granted to the Applicant, subject to the submission of a solvent surety in the amount of Rs. 1,00,000/- (Rupees One Hundred Thousand), to the satisfaction of the trial Court. This shall be accompanied by the execution of a personal recognizance (P.R.) bond in the corresponding sum. It is further emphasized that the observations made in this order are solely for the purpose of deciding this bail application and shall not influence the merits of the case during the trial proceedings. These are the reasons for the Short Order dated: 05-03-2025.

JUDGE