

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Bail Appln. No.S-92 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE
1. For orders on office objections.	
2. For hearing of main case.	
Applicant	: Allah Jurio @ Porho S/o Moula Bux Sangrasi Through Mr. Muhammad Shafique Gaddi, Advocate.
The State	: Ms. Rameshan Oad, Assistant P.G.
Date of hearing	: 10.02.2025.
Date of Order	: 10.02.2025.

ORDER

ABDUL HAMID BHURGRI, J:- Being un-successful in obtaining his release on bail from the Trial Court in Crime No.144 of 2024 registered at P.S Bhit Shah District Matiari for offence under Section 9(i) 3(c) of CNS Amended Act, 2022, the above named applicant is seeking his release on bail through the instant bail application.

2. It is alleged that on 30.11.2024 at about 1800 hours, the complainant ASI Ghulam Mustafa Lakho alongwith his subordinate staff during patrolling in government vehicle received spy information when reached at Tanbura Chowk that present applicant is available near Yaqoob Shaheed Graveyard alongwith a plastic shopper containing chars for selling. On such information they reached the pointed place and apprehended him alongwith said shopper. The complainant opened the shopper and found containing 1120 grams of chars. The applicant was arrested and such mashirnama of arrest and recovery was made at spot in presence of police mashirs; hence, FIR was lodged against him on behalf of the State.

3. Learned Counsel for applicant contends applicant is innocent and has been falsely implicated in this case; that huge quantity of

contraband is allegedly shown to have been recovered from his possession for selling it at Yaqoob Shaheed Graveyard; that the place of incident as shown is a public place where so many people used to remain present but not a single private witness was associated to witness the recovery proceedings though the police have spy information; that even no customer/client is shown to have purchased the alleged contraband. He further submits that case is of border line which requires further inquiry and as such he is entitled to post-arrest bail.

4. In contra, learned APG opposes the bail application and submits that 1120 grams charas is shown to have been recovered from the possession of applicant, hence, applicant is not entitled for his release on bail. She further submits that application of Section 103 Cr.P.C is ousted as is embodied under Section 25 of CNS Act, 1997 hence, arguments of learned counsel for applicant to that extent is of no substance. She; however, could not controvert the fact that the place of incident as shown is public place and any customer or person to whom he was allegedly selling the contraband was not associated or has been made witness in this case by the police.

5. I have heard learned Counsel for the applicant as well as learned APG and perused the material made available before me.

6. Admittedly, the place of incident is public thorough-fare near Yaqoob Graveyard where so many people used to remain available but none from them was associated as witness in this case. No doubt, applicability of Section 103 Cr.P.C is ousted under the Act *ibid*, yet police officer went to charge a person for the offence which carries punishment in shape of his detention then it was incumbent upon him to associate independent person to witness the recovery proceedings as it is the case of spy information. It is well settled law that if there creates some doubt in a case of any accused even at bail stage, the benefit of which can be extended to him. So is the situation in the case in hand because all the witnesses are police officials and in absence of any

impartial witness their integrity is required to be scrutinized which could only be ascertained when their evidence will come on record and since then applicant, whose case absolutely appears to be one of further inquiry as provided by Sub-Section (2) to Section 497 Cr.P.C cannot be kept behind the bars for an indefinite period. The case has been challaned and applicant is no more required by the Police for the purpose of investigation or interrogation. Moreover, in F.I.R or in recovery memo no where it is stated that it was net or gross weight of the narcotics and in such circumstances it becomes a border line case of the Act. Reliance is placed upon the case of AYAT KHAN and another v. The STATE (2020 SCMR 350) in which the Honourable Supreme Court has granted bail to accused from whom 1100 grams of Heroin Powder was recovered.

7. In view of the above, it is observed that applicant has made out a prima facie case for his release on bail. Accordingly, this bail application is allowed and applicant Allah Jurio @ Porho son of Moula Bux shall be released on bail subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand) and P.R Bond in the like amount to the satisfaction of learned Trial Court.

8. Needless to mention that the observations made hereinabove are tentative in nature and shall not in any way prejudice the merits of the case at the trial.

Bail application stands disposed of.

JUDGE