

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2822 of 2024

Applicant : Sajjad s/o Alif Khan
through Mr. Muhammad Ibrahim Abro,
Advocate

Respondent : The State
through Ms. Rubina Qadir, APG.

Date of hearing : 27.03.2025

Date of order : 28.03.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicant Sajjad seeks post-arrest bail in case bearing crime No.505/2024, offence u/s 6/9(1)3(C) of the CNS Act, 2022, of P.S Ibrahim Hyderi, Karachi. The applicant's plea for bail was previously declined by the learned Model Criminal Trial Court / Additional District & Sessions Judge-III Malir Karachi through an order dated 19.11.2024.

2. According to the prosecution's case, on a spy tip-off, the applicant was intercepted in a street, Punjabi Para, Ibrahim Hyderi at about 0015 hours. During the search, one packet of charas containing 31 satchel total weighing 2215 grams was recovered. Consequently, a case was registered based on these facts.

3. Learned counsel contended that the applicant has been falsely implicated by the police, who planted charas on him. He argued that despite prior information, no independent private witnesses were picked up or associated by the police from the scene or the way to witness the alleged recovery. He further submitted that neither photographs nor video recordings of the seizure and arrest were made, which places the case within the scope of further inquiry. He emphasized that the case has been challaned, and the applicant is not required by the police for further investigation. Therefore, he prayed that the applicant be granted bail. In support of his contentions, he relied on the case of *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934).

4. Conversely, the learned APG strongly opposed the bail application, arguing that no mala fide intention on the part of police has been demonstrated to suggest that the alleged recovery was planted on the applicant.

5. The alleged recovery is claimed to have been made based on spy information, and no independent witness is shown to have been present during the recovery. Additionally, the police failed to make any video recordings or take photographs of the search, seizure, and arrest, as highlighted by the Hon'ble Supreme Court in the reported case of *Zahid Sarfaraz Gill* (supra), which was relied upon by the learned counsel for the applicant. The applicant has remained in jail since his arrest on 15.09.2024. Section 9(1)(3)(C), of the Act prescribes imprisonment of up to fourteen years, but not less than nine years, for possessing, importing, exporting, and trafficking 'charas' in contravention of Sections 6, 7, and 8 of the Act for quantities between 1000 grams and 4999 grams. The statute has set the threshold at one kilogram. Since the quantity of the recovered narcotic substance exceeds the prescribed limit mentioned in the Chart Section under Section 9(c) of the CNSA, the relevant provision reads as follows:

"9(c) death or imprisonment for life, or imprisonment for a term which may extend to fourteen years and shall also be liable to fine which may be up to one million rupees, if the quantity; of narcotic drug psychotropic substance or controlled substance exceeds the limits specified in clause (b). Provided that if quantity exceeds ten kilograms the punishment shall not be less than imprisonment for life."

6. Since the present matter pertains to bail, Section 51 of the CNSA lays down specific conditions under which bail can be refused for certain offenses. To clarify the matter, the relevant section is reproduced below:

"51. No bail is to be granted in respect of certain offenses.--(1) Notwithstanding anything contained in sections 496 and 497 of the Criminal Procedure Code, 1898 (V of 1898), bail shall not be granted to an accused person charged with an offense under this Act or under any other law relating to narcotics where the offense is punishable with death. (2) In the case of other offenses punishable under this Act, bail shall not be normally granted unless the Court is of the opinion that it is a fit case for

the grant of bail and against the security of a substantial amount."

7. The language employed in the statute indicates whether it is mandatory or directory in nature. Upon examining the section, it is evident that bail is not granted for offences under the CNSA, and sections 496 and 497 of the Criminal Procedure Code have been explicitly excluded. However, a certain degree of discretion is allowed to the Court under subsection (2) of Section 51, CNSA, where the statute provides that bail should not ordinarily be granted unless the Court determines that it is a fit case for bail. The phrase "fit case for grant of bail" depends on the facts of each individual case and requires compelling circumstances to justify extending the concession of bail to the accused.

8. Furthermore, a preliminary review of the police record suggests that it needs to be determined whether the applicant is prima facie involved in the spread of narcotics in society, whether his case falls within the prohibition contained in Section 51 of the CNSA, and whether there is any doubt regarding the possibility of the applicant receiving the maximum sentence prescribed by the newly amended statute. It is also unclear whether this case falls between subsections (b) and (c), as analyzed in the decisions of the Supreme Court in the cases of *Saeed Ahmed v. State* (PLJ 2018 SC 812), *Aya Khan v. The State* (2020 SCMR 350), and *Ateebur Rehman @ Atti Mochi v. The State* (2016 SCMR 1424). These cases involved the recovery of 1014 grams and 1100 grams of heroin, respectively, falling under Section 9(C) of the CNSA, where bail was granted by the Supreme Court.

9. In light of the above, it remains to be determined by the learned trial Court to what extent the applicant may be subjected to the provisions of the law, a decision that can only be made after recording the evidence. Since the applicant is not required for further investigation, and as the case falls between two provisions of law, it is for the trial court to decide which provision should be invoked. Therefore, this case falls within the ambit of further inquiry as contemplated by Section 51(2) of the CNS Act.

10. In the present case, the applicant's CRO is also annexed, indicating that apart from this case, no previous record has been produced to show his involvement in any similar crime. This fact suggests that the applicant is not habitually involved in spreading narcotics in society. Consequently,

the quantum of punishment can only be determined by the trial Court after considering the pro and contra evidence presented during the trial. It is also a well-settled principle that every accused is presumed innocent until proven guilty. Hence, in my humble view, the applicant's case clearly falls within the purview of further inquiry as provided under Section 51(2) of the CNSA, read with Section 497(II) Cr.P.C.

11. Given the above, the applicant has, prima facie, made out a case for further inquiry. Accordingly, he is admitted to bail subject to furnish a solvent surety and P.R. bond in the sum of Rs. 500,000/- (Rupees five lac only) to the satisfaction of the trial Court.

12. It is pertinent to mention that the above observations are tentative in nature and shall not prejudice the case of either party during the trial.

J U D G E

Shahbaz/PA