

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 1028 of 2025

Applicant : Abdul Qadir son of Nageebullah,
through Mr. Shah Imroz Khan, Advocate

Respondent : The State
through Mr. Sarfaraz Ahmed Mangi, Spl.
Prosecutor ANF.

Date of hearing : 09.05.2025.

Date of order : 15.05.2025.

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicant Abdul Qadir seeks post-arrest bail in a case bearing Crime No.17/2024 registered at Police Station ANF Clifton, Karachi offence under Sections 9(2)(6)-C R/w 14, and 15 of the Control of Narcotic Substances Act, 1997 (as amended by Act XX of 2022). Previously bail of applicant was declined by the learned Special Judge CNS-II, Karachi vide order dated 19.12.2024.

2. The prosecution theory, as set forth in the FIR, reveals that on 04.03.2024, a team of ANF officials acting upon credible information intercepted container No. CTIU-2707223 at KICT Port, which was allegedly being used to smuggle methamphetamine (“Ice”) concealed in juice bottles. Upon reaching the location, three individuals were apprehended near the said container, including the present applicant Abdul Qadir, who was described as the owner of the consignment. During the search, 11 cartons were found to contain bottles filled with liquid methamphetamine. A total of 168.960 liters of methamphetamine was recovered. Personal search of apprehended accused led to recovery of two mobile phones, a CNIC copy, cash, and a wallet. The recovered contraband, upon forensic analysis, tested positive for methamphetamine.

3. Learned counsel for the applicant contended that the applicant was not arrested from the place of recovery but was allegedly picked up from his residence on 02.04.2024, and to substantiate this plea, he relied upon a CDR report showing that the applicant's mobile phone was switched off at 03:54 hours on 02.04.2024 and remained inactive thereafter. It is further argued that no direct recovery was made from the applicant; that other co-

accused persons have been granted bail; and that there exists no documentary evidence such as consignment records, E-form, or gate pass linking the applicant to the contraband. He further argued that the co-accused Owais, Rashid and Arsalan are on bail, therefore the rule of consistency applies in the case of applicant. He further relied that the recovered contraband was not recovered directly from the physical possession of accused.

4. The learned Special Prosecutor ANF opposed the bail plea of the applicant with strong emphasis on the gravity of the offence. It was submitted that the accused was found directly involved in a meticulously planned transnational drug trafficking operation, wherein a huge quantity 168.960 litres of Methamphetamine (commonly known as "Ice") was recovered from a container intercepted at Karachi International Container Terminal. The contraband was cunningly concealed in cartons of juice bottles, clearly pointing to a sophisticated and deliberate smuggling attempt. The applicant, Abdul Qadir, was apprehended from the port premises at the time of seizure, and has been named in the FIR as the owner of the consignment, with recovery witnesses specifically implicating him in their statements under Section 161 Cr.P.C. The prosecution contends that the applicant's physical presence at the terminal and his alleged ownership of the container leave no room for doubt regarding his active and conscious role in the offence. The learned Special Prosecutor further argued that the bar under Section 51 of the Control of Narcotic Substances Act, 1997 squarely applies, as the offence falls under Section 9(c) of the said Act and involves a commercial quantity attracting a minimum sentence of life imprisonment. Therefore, unless the Court finds reasonable grounds to believe the accused is not guilty, bail cannot be granted, a threshold the present case does not meet. The defense's reliance on mobile phone CDR to challenge the accused's presence was brushed aside as irrelevant at the bail stage, particularly when ocular evidence places the accused at the scene. Moreover, it was pointed out that the lack of personal recovery from the applicant is immaterial since the drugs were recovered from a container under his alleged ownership, thereby attracting constructive possession, which is well recognized in narcotics jurisprudence. In response to the plea of parity with co-accused, it was clarified that bail was granted to others on different factual footings, they were not apprehended from the site, nor

were they linked to the consignment as owners. Thus, the principle of consistency was deemed inapplicable to the present applicant. The learned Special Prosecutor also emphasized the grave public harm caused by Methamphetamine trafficking, terming it a serious global menace, and reminded the Court of Pakistan's international obligations under drug control conventions. Lastly, it was urged that the case does not call for further inquiry, nor has any exceptional ground such as delay in trial or hardship been made out. Accordingly, it was prayed that the bail application be dismissed, as the prosecution has established sufficient material connecting the accused with the commission of offence and the case falls within the prohibitory clause of Section 497 Cr.P.C.

5. Before parting with this order, I would like to firstly emphasize upon the case laws & unreported judgments relied upon by learned counsel for the applicant, but find that none of the cited authorities are applicable to the facts of the present case in any meaningful way so as to warrant the concession of bail.

6. In *Criminal Bail Application No.28/2024*, bail was granted solely on the ground of statutory delay in the conclusion of trial, which does not arise in the present case as the proceedings are still at a nascent stage. In *Criminal Bail Application No.1989/2021*, the case involved psychotropic tablets and was treated as one requiring further inquiry due to insufficient linkage with the accused. In *Criminal Bail Application No.1739/2024*, narcotics were recovered from a vehicle not owned or possessed by the accused, who was also not nominated in the FIR. Similarly, in *Criminal Bail Application No.680/2022*, the accused was merely a partner in a company that provided the container, unlike the present applicant, who is alleged to be the owner of the goods and has been directly linked with the recovered contraband. In the case of *Dad Khan v. The State* (2020 SCMR 2062), the accused was subsequently joined in trial as a member of a larger drug trafficking network, which is not the case here. In *Gul Zaman v. The State* (1999 SCMR 1271), bail was granted after prolonged pre-trial incarceration of one and a half years, a factor not present in the instant matter. The case of *Moosa Khan v. The State* (2024 YLR 363) involved recovery from co-accused with no direct possession attributed to the applicant. *Mir Javed Iqbal Khan Jamali v. The State* (2000 PCr.LJ Note-04) involved uncertainty as to the accused's identity, and in *Gul Anwar v. The*

State (2012 MLD 1521), the element of conscious possession could not be established at the bail stage. Moreover, in *The State v. Syed Abdul Qayyum* (2001 SCMR 14), there was no direct or circumstantial evidence available against the accused. *Amir Muhammad Siddiq v. The State* (2023 PCr.LJ Note-10) concerned absence of case property and forensic analysis. In *Alamgir v. The State* (2010 YLR 245), the matter required further inquiry as to conscious knowledge, and in *Zahir Shah v. The State* (2009 MLD 467), the accused lacked knowledge of narcotics found in the vehicle. All these cases are distinguishable on facts and do not support the case of the present applicant, who has been arrested in connection with a container from which a commercial quantity of narcotics has been recovered.

7. Coming to the merits of the present bail application, it is surfaced that the accused was arrested from the spot along with the necessary documents. No enmity or malice has been shown by the applicant against police official for dragging him in this case. Learned advocate for applicant reliance on Call Data Record (CDR) to negate presence is wholly misconceived. Mobile inactivity, even if assumed, does not dislodge ocular account placing the applicant at the port. Such technical pleas merit trial, not bail. No narcotics were recovered from personal possession; however, contraband was seized from a container traced to the applicant. Under the doctrine of constructive possession, such ownership suffices at this stage. Reliance on parity is also misplaced. The drug in question, Methamphetamine is of a grave and destructive nature. Its trafficking has transnational implications. Courts are to remain mindful of Pakistan's obligations under international conventions. Public interest outweighs personal liberty in such cases. There exists no ground for further inquiry under Section 497(2) Cr.P.C., nor is any delay or hardship shown to justify deviation from the bar on bail. Presumption under Section 29 of the CNS Act stands triggered and remains unrebutted. The prosecution case, at this stage, is supported by documentary evidence showing the container's ownership and shipment details. Prima facie, sufficient material connects the applicant with the consignment and the offence alleged.

8. In response to the plea of consistency, it is to be noted that the co-accused persons were granted bail by the trial court primarily on the ground that the narcotic substance was not recovered from their possession and that they were not present at the spot at the time of seizure. In contrast, the

present applicant was apprehended from the port area, allegedly while overseeing the shipment. Therefore, the rule of consistency is not attracted to the applicant's case. Furthermore, Section 51 of the CNS Act, 1997 squarely bars the grant of bail in such offences unless the case falls within the scope of further inquiry or hardship, neither of which is convincingly demonstrated in the instant matter. In view of the above, no case for bail is made out. The application stands dismissed.

J U D G E