

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2920 of 2024

Applicant : Muhammad Asif son of Abdul Ghafoor,
Through Mr. Faisal Usman, Advocate

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

Date of hearing : 20.05.2025

Date of order : 23.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – This bail application under Section 51 of the Control of Narcotic Substances Act (CNSA), read with Section 497 Cr.P.C, has been filed by Muhammad Asif, presently in custody at Malir Jail, challenging the order dated 28.09.2024 passed by the learned Special Court-1 (C.N.S), Karachi, in Special Case No. 100/2024 arising out of FIR No. 16/2024 registered under Sections 9(2), 9, 14, and 15 CNSA at ANF Gulshan-e-Iqbal Police Station, Karachi.

2. The prosecution's case, as narrated in the FIR dated 18.05.2024, is that Sub Inspector Asad Ali of ANF, acting on credible information, launched a raid near Al-Asif Square Sohrab Goth on the Karachi Super Highway, where Muhammad Asif was allegedly caught red-handed transferring 20 kilograms of Ketamine in a white Toyota Corolla (registration BGP-796) to his associate Syed Tariq Hussain, who was driving a blue Kia Picanto (registration BRG-416). Upon confrontation, both accused allegedly admitted to the possession of narcotics, which were recovered from behind the seat of the Kia Picanto. The recovery operation was conducted late at night, and the narcotics along with vehicles and personal belongings were seized and sealed on the spot. The prosecution submits that all procedural formalities were observed during the raid, including preparation of recovery memos and sealing of evidence in the presence of witnesses.

3. Learned counsel contends that the applicant is innocent and has been falsely implicated. He argued that the contraband was allegedly recovered behind the seat of the vehicle, not from the applicant's personal custody. The applicant was sitting in the driver's seat without any narcotics in hand, making it doubtful whether he was in exclusive control

of the contraband. He argued that no photographs or videos were taken at the time of recovery or arrest, and the available photographs show a bright daytime scene inconsistent with the night-time raid stated in the FIR. This creates doubt about the authenticity of the recovery. He argued that the Chemical Examiner's report does not certify compliance with Rule 6 of the Control of Narcotic Substances Rules, 2001 (FORM-II), rendering the report inadmissible as held in *Imam Bux v. The State* (2018 SCMR 2039). He argued that the raiding party did not secure two independent witnesses during the search and recovery as required under the CNS Act, thus making the recovery illegal and liable to be discarded. He next contended that the prosecution failed to produce mobile phone location data or Call Detail Records (CDR) for the vehicle on the date of the alleged incident, thereby failing to establish the applicant's presence at the crime scene. He further argued that more than six months have elapsed since the alleged incident but no prosecution witness has been examined against the applicant. He further contended that the case has reached the trial stage with a challan filed, and the accused is in custody without further requirement for investigation. He next argued that bail is a rule and jail an exception, especially where the applicant has no previous criminal record. He put Reliance on authoritative case law viz. *PLJ 2024 SC (Cr. C.) 8* (Supreme Court, 22.11.2023) affirming the importance of procedural safeguards and evidence authenticity in narcotics cases. *Imam Bux v. The State* (2018 SCMR 2039) emphasizing mandatory compliance with chemical examiner rules. *2020 P.Cr.L.J 1295* (bail granted despite large seizure due to procedural lapses). Learned counsel prays for bail on grounds of innocence, procedural irregularities, and fundamental rights.

4. Learned Prosecutor vehemently opposes the bail application, submitting that the offence under Sections 9(2), 9, 14, and 15 CNSA is serious and non-bailable, attracting punishment of imprisonment for life or more. The recovery of 20 kilograms of Ketamine, a controlled substance, is substantial and prima facie proof of guilt. The presence of the applicant at the scene along with recovered contraband and corroborative statements of ANF officials establish the case against the applicant beyond mere suspicion. The procedural compliance regarding seizure and safe custody has been duly followed as per the investigation record. The absence of independent witnesses is explained by the witnesses' fear, and the recovery memo was signed in the presence of police witnesses, which

is permissible under law. Delay in prosecution witness examination does not warrant bail when the evidence against the accused is strong and recovery is proved. The Supreme Court and High Court precedents clearly hold that the consent or presence of the accused with narcotics in such quantity negates the presumption of innocence.

5. It is well-settled that at the bail stage, a detailed or conclusive appreciation of evidence is neither permissible nor warranted. The Court's role is limited to a tentative assessment to ascertain whether the applicant is *prima facie* connected with the commission of the alleged offense. The offense with which the applicant stands charged is one against the society at large. The applicant was apprehended red-handed in possession of ketamine narcotics of 20 K.G. There is no suggestion or material on record indicating any enmity between the applicant and the police officials involved in the arrest.

6. A direct role has been attributed to the applicant, and in view of the recent amendment brought through Act No. XX of 2022 to the Control of Narcotic Substances Act, 1997, the offense carries a prescribed punishment of life. *Prima facie*, sufficient material is placed on record by the prosecution, including the chemical examination report dispatched to the laboratory soon after registration of the FIR, which returned a positive result. Such material suffices to repudiate the contentions raised by learned counsel for the applicant.

7. In *Socha Gul v. The State* (2015 SCMR 1077), the Hon'ble Supreme Court has underscored that bail in narcotic cases should be granted sparingly, bearing in mind Section 51 of the Control of Narcotic Substances Act, 1997, which issues a note of caution and recognizes that such offenses affect society at large. The CNS Act, 1997, consolidates and amends the law relating to narcotic drugs and psychotropic substances, regulating their prosecution, processing, and trafficking, while prescribing progressive punishments and establishing Special Courts with exclusive jurisdiction over such matters. The larger public interest demands that discretion under Section 497 Cr.P.C be exercised with restraint in cases involving recovery of narcotics. The principles enunciated by the Supreme Court in *The State v. Javed Khan* (2010 SCMR 1989) are equally instructive in this regard.

8. Learned counsel has earnestly urged this Court to deliver a categorical finding of non-involvement of the accused at this juncture. However, it is well-recognized that no such conclusive determination can be made at the bail stage, as each criminal case is governed by its unique facts and circumstances. Judicial discretion, irrespective of its domain, must be exercised with circumspection and prudence, fully aware of the context and potential consequences. It is impermissible to treat bail in narcotic cases as a matter of course on the basis of 'further inquiry' or 'conscious knowledge,' in disregard of settled legal principles governing bail.

9. With regard to the non-association of private persons during investigation, Section 25 of the CNS Act exempts their presence in narcotics cases. Moreover, the evidence of police officials is deemed as credible as that of any other witness. In *Noor Khan v. The State* (2021 SCMR 1212), the Supreme Court refused bail to an accused from whom 1320 grams of cannabis were recovered. Addressing non-compliance with Section 21 of the CNS Act, the Supreme Court in *Zafar v. The State* (2008 SCMR 1254) held that Sections 20 to 22 of the Act are directory, and their non-compliance cannot vitiate trial or conviction. Allegations of false implication cannot be entertained at this stage, as doing so would require going beyond the permissible tentative assessment.

10. Regarding the defense plea and burden of proof, Section 29 of the Control of Narcotic Substances Act, 1997, provides for a presumption that a person found in possession of narcotics has committed the offense, subject to proof to the contrary. The innocence or guilt of the applicant remains to be determined by the trial Court.

11. In the circumstances, this Court does not find the applicant entitled to bail at this stage. The prayer for bail, particularly on the ground that the case against the applicant is dubious is accordingly declined and the bail application is dismissed. Given the urgency, the learned trial Court is directed to conclude the trial within three months, at the very least ensuring that the complainant and mashir are examined. Should there be any delay, cogent reasons shall be communicated to this Court. The observations made herein are tentative and shall not influence the trial Court's determination on the merits of the case.

JUDGE