

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Misc. Application No. S-483 of 2025

Applicant : Mehmood Khan s/o Muhammad Haneef
(Presently confined at Central Prison,
Sukkur)
Through Mr. Mehfooz Ahmed Awan,
Advocate

The State : Through Syed Naveed Ahmed Shah,
DAG

Date of Hearing : 08.08.2025
Date of short order : 08.08.2025
Date of detailed order : 11.08.2025

ORDER

Khalid Hussain Shahani, J: -- Applicant sought post arrest bail for offence under section 9(c), 14, 15 of the Control of Narcotic Substances Act, 1997, arising out of FIR No. 09/2021 of Police Station ANF Sukkur, his earlier bail was declined by the court of learned Additional Sessions Judge-I/MCTC-I, Sukkur vide order dated 12.02.2025.

2. The prosecution narrative, as contained in the FIR, reveals that on 14.08.2021, complainant SI Mudasir Ali Khan of ANF Sukkur, acting on prior intimation received from superior officers regarding suspected narcotics transportation, intercepted a Bedford truck bearing Registration No. QA-7482 near Dilshad Hotel, Shikarpur Road, Sukkur. Two persons, namely Hussain Bux and Muhammad Bux, who were driving and accompanying the truck, were apprehended at about 1500 hours. Upon thorough search, concealed cavities were discovered housing 499 packets of charas, each weighing one kilogram, constituting a substantial commercial quantity. Samples were drawn in accordance with prescribed procedure and the case property seized under proper receipt. Consequent upon; case was registered *inter alia* on above facts.

3. The FIR, it must be emphasized with utmost clarity, nominated only the aforementioned two accused persons. Neither the present applicant nor any other individual was named, described, identified, or

even remotely alluded to either directly or indirectly in the original complaint. This fundamental fact assumes critical significance in the present proceedings. During the course of investigation, however, the Investigating Officer, through what can only be characterized as a bare assertion devoid of evidentiary foundation, arrayed the applicant and one Muhammad Anwar as absconding accused persons in the report under Section 173 Cr.P.C., without collecting any ocular, documentary, or circumstantial evidence linking them with either the recovered narcotics, the intercepted vehicle, or the apprehended accused. No recovery was made from the applicant; no witness mentioned his involvement under Section 161 Cr.P.C.; nor did either of the apprehended accused implicate him during their initial statements or subsequent interrogation.

4. Subsequent trial developments demonstrate that accused Hussain Bux expired during the pendency of proceedings, and co-accused Muhammad Bux was convicted by the learned trial Court. Beyond these developments, the prosecution file remains conspicuously barren of any incriminating material against the present applicant.

5. Mr. Awan, learned counsel for the applicant, has advanced cogent arguments grounded in established jurisprudence and constitutional principles. He contended with considerable force that the very foundation of the case against applicant rests upon hearsay, conjecture, and prosecutorial overreach. Counsel placed strong reliance on the celebrated judgment in *Muhammad Saleem Khan v. The State* (2009 MLD 1059), wherein this Court categorically held that addition of an accused's name in the absence of supporting material cannot justify curtailment of liberty, and that such practice constitutes an abuse of the judicial process. He further referred to *Hameedullah v. The State* (2013 P.Cr.L.J 923), emphasizing that mere abscondence, unaccompanied by corroborative evidence, is insufficient to establish guilt and cannot serve as a substitute for substantive evidence. Counsel urged with considerable persuasion that the prosecution's stance represents nothing but an attempt at bolstering a fundamentally weak case through

procedural manipulation. He submitted that compelling the applicant to face trial without any evidentiary foundation would amount to subjecting him to the very oppression that the law seeks to prevent, and would constitute a mockery of the constitutional guarantees enshrined in Articles 9 and 10-A of the Constitution.

6. On the other hand, Mr. Jatoi, learned Special Prosecutor ANF, while formally opposing the application as a matter of prosecutorial duty, demonstrated remarkable candor when confronted with the stark realities of the record. When specifically asked to indicate any incriminating piece of evidence against the applicant except for the bare recital of his name in the challan, he was unable to do so. With commendable honesty, he fairly conceded that none of the prosecution witnesses implicated the applicant in their statements under Section 161 Cr.P.C., and no recovery, circumstantial evidence, or corroborative material was ever secured against him.

7. After thoughtful and meticulous consideration of the material produced, the issue for determination narrows to a question of fundamental constitutional and jurisprudential importance: whether mere inclusion of the applicant's name in the challan as an absconder, without more, satisfies the evidentiary threshold required for prosecution under Sections 9(c), 14, and 15 of the Control of Narcotic Substances Act, 1997.

8. The Constitution of the Islamic Republic of Pakistan, 1973, through its Eighteenth Amendment, has enshrined the fundamental right to fair trial and due process in Article 10-A. This provision, which reflects Pakistan's commitment to international human rights standards, categorically declares that "for the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process." The insertion of this Article represents a watershed moment in Pakistan's constitutional development, formally recognizing what the Superior Courts had long

acknowledged as an inherent component of Articles 9 and 25 of the Constitution.

9. The right to fair trial encompasses several interrelated components: the right to be presumed innocent until proven guilty, the right to adequate time and facilities for preparation of defense, the right to examine witnesses, and most importantly for present purposes, the right not to be subjected to prosecution in the absence of credible evidence. As observed by the learned Chief Justice of Pakistan in his address on fair trial, this right was already being recognized by the Superior Courts even before its formal insertion through constitutional amendment. It is a well-settled proposition, deeply rooted in both Islamic jurisprudence and common law tradition, that criminal law places the gravest of obligations on the prosecution to establish, at least *prima facie*, material to connect the accused with the offence alleged. The liberty of a citizen is protected not only by statute but also by the constitutional mandate enshrined in Article 9 of the Constitution, which guarantees that no person shall be deprived of life or liberty save in accordance with law.

10. This fundamental principle finds expression in the time-honored Latin maxim "*Ei incumbit probatio qui dicit, non qui negat*" - the burden of proof lies upon him who asserts, not upon him who denies. The maxim embodies the centuries old wisdom that suspicion, however grave, cannot take the place of evidence. As eloquently stated in the Pakistani jurisprudence, "an accused person is presumed to be innocent till the time he is proved guilty beyond reasonable doubt, and this presumption of his innocence continues until the prosecution succeeds in proving the charge against him beyond reasonable doubt". The theoretical underpinning of this principle rests on the legal maxim that "it is better that ten guilty persons escape than that one innocent suffer conviction". This philosophy reflects not judicial leniency toward crime, but rather judicial vigilance in protecting the innocent from the awesome power of the State. The presumption of innocence serves as a fundamental safeguard against wrongful conviction and ensures that

the scales of justice remain balanced in favor of the individual when confronted with the vast resources of the State. The concept of abuse of process finds its foundation in the inherent jurisdiction of Courts to prevent their own machinery from being used as an instrument of injustice. As established in numerous precedents, abuse of process occurs where the prosecutor manipulates or misuses the rules of procedure, or where proceedings are initiated or continued without adequate evidentiary foundation to such an extent that a fair trial becomes impossible or where continuation would amount to oppression. The Supreme Court of Pakistan, in its guidelines regarding the invocation of Section 265-K Cr.P.C., has recognized that courts possess the inherent power to prevent abuse of their process. The jurisdiction is exercised not merely to expedite proceedings, but to ensure that the judicial system serves the cause of justice rather than becoming a tool for harassment or persecution. The maxim "*audi alteram partem*" hear the other side constitutes a fundamental pillar of natural justice. However, this principle presupposes that there exists a genuine case to be heard. Where the prosecution has failed to present even a *prima facie* case worthy of judicial consideration, compelling an accused to undergo the rigors of criminal trial would itself constitute a violation of natural justice. As held by this Court in various precedents, the principle of *audi alteram partem* "is the basic concept of the principle of natural justice and states that 'no one should be condemned unheard'". However, this maxim must be read in harmony with the equally fundamental principle that no person should be subjected to trial without credible evidence of wrongdoing.

11. Section 265-K Cr.P.C. represents a statutory embodiment of the Court's inherent jurisdiction to prevent abuse of process. The provision empowers the Court to acquit an accused at any stage of proceedings if there is no probability of conviction on the material available. This power, though extraordinary, is intended to ensure that individuals are not made to suffer the rigors of criminal prosecution in the complete absence of evidence. The wisdom underlying this

provision is profound: it recognizes that the process of criminal trial itself constitutes punishment, involving as it does restriction of liberty, social stigma, financial burden, and mental anguish. To subject an accused to such ordeal without reasonable prospect of conviction would amount to punishment without trial, a concept antithetical to civilized jurisprudence. The Supreme Court has established that ordinarily an accused invoking Section 265-K pleads on four grounds: firstly, that the facts alleged do not constitute an offence; secondly, that there is no evidence or incriminating material on record; thirdly, that the evidence collected is insufficient and will not sustain conviction; and fourthly, that the prosecution evidence recorded does not make out a case for conviction. The present case falls squarely within the second category.

12. Several Latin maxims find direct application to the circumstances of the present case viz. "*Suspicio non probatio*" suspicion is not proof. The mere act of the Investigating Officer in arraying the applicant's name without supporting evidence cannot elevate suspicion to the level of legal proof. "*Nemo judex in causa sua*" no one should be judge in his own cause. This principle, while primarily applicable to issues of bias, has broader implications for the integrity of the judicial process. Where prosecution proceeds without evidence, the system itself becomes biased against the accused. "*Ubi jus ibi remedium*" where there is a right, there is a remedy. The applicant's right to be free from baseless prosecution finds its remedy in the Court's power under Section 265-K to prevent abuse of process. The maxim "*Actori incumbit probatio*" the burden of proof lies with the plaintiff (or in criminal cases, the prosecution) finds particular relevance. This principle ensures that legal decisions are based on evidence rather than mere accusations or allegations. In the present case, the prosecution has manifestly failed to discharge this fundamental burden. The rule of law, as enshrined in the Constitution, demands that state power be exercised within legal constraints and in accordance with established procedures.

13. Article 4 of the Constitution declares that the right of individuals to be dealt with in accordance with law is inviolable. To

permit prosecution to proceed on the basis of bare assertion would constitute a violation of this fundamental constitutional principle. Moreover, Article 25 of the Constitution guarantees equality before law and equal protection of law. Subjecting the applicant to trial without evidence while others similarly situated are not prosecuted would constitute discrimination and violation of equal protection.

14. The record is stark in its absence of any direct evidence connecting the applicant to the alleged crime. No witness has testified to seeing the applicant at or near the scene of the alleged offense. No recovery has been made from his person or property. No communication or correspondence has been intercepted linking him to the conspiracy. The prosecution case, stripped of legal technicalities, rests on nothing more than the bare assertion of the Investigating Officer.

15. Even accepting *arguendo* that direct evidence may not always be available in cases of this nature, the prosecution has failed to establish even a chain of circumstantial evidence. There is no evidence of the applicant's presence in the vicinity at the relevant time. There is no evidence of his association with the convicted accused. There is no evidence of any financial transactions or communications that might suggest involvement in the alleged conspiracy. The law of circumstantial evidence requires that the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that the accused is guilty. In the present case, there are no circumstances whatsoever, the chain is not merely incomplete, it is non-existent.

16. The prosecution's reliance on the applicant's alleged abscondence is legally and factually untenable. As established in *Hameedullah v. The State* (2013 P.Cr.L.J 923), "abscondence by itself neither creates presumption of guilt nor can it substitute substantive evidence of involvement." Abscondence may, at best, be regarded as a circumstantial link, but it cannot, in the absence of corroboration,

establish culpability. Moreover, the concept of abscondence presupposes that the person was aware of the proceedings against him and deliberately avoided arrest. There is no evidence that the applicant was ever served with any notice or that he was aware of the investigation. His subsequent surrender and appearance before the Court belies any suggestion of deliberate evasion.

17. The inclusion of the applicant's name in the challan appears to be based entirely on hearsay evidence, which is generally inadmissible in criminal proceedings. The Investigating Officer has not explained the source of information that led to the applicant being implicated. No independent witness has corroborated the allegation. The entire case against the applicant appears to be constructed on the foundation of rumor and speculation.

18. The Superior Courts of Pakistan have consistently held that criminal proceedings cannot be sustained on the basis of suspicion alone. In *Muhammad Saleem Khan v. The State* (2009 MLD 1059), this Court held that where continuation of proceedings would amount to harassment in the absence of material evidence, the Court must exercise its jurisdiction to secure the ends of justice. Similarly, in numerous other precedents, the Courts have emphasized that the mere mention of an accused's name in a challan, without supporting evidence, cannot justify subjecting him to trial. The principle that "suspicion, however strong, cannot take the place of proof" has been repeatedly affirmed.

19. Pakistan's commitment to international human rights standards, as reflected in Article 10-A of the Constitution, requires adherence to internationally recognized principles of criminal justice. The International Covenant on Civil and Political Rights, to which Pakistan is a signatory, guarantees the right to fair trial and presumption of innocence. The European Convention on Human Rights and the jurisprudence of the European Court of Human Rights provide valuable guidance on the interpretation of fair trial rights. The Court has

consistently held that the right to fair trial includes protection against vexatious or abusive prosecutions.

20. The continuation of proceedings against the applicant would serve no legitimate purpose of criminal justice. It would neither advance the cause of truth finding nor serve as a deterrent to crime. Instead, it would constitute judicial harassment of an individual who has been implicated without evidence. The Courts have a duty to prevent their process from being used as an instrument of oppression. Where proceedings lack evidentiary foundation, judicial intervention becomes not merely permissible but necessary to preserve the integrity of the justice system.

21. The judicial system operates with limited resources, and Courts have a responsibility to ensure that these resources are utilized efficiently in the service of justice. Allowing baseless prosecutions to proceed to trial results in waste of judicial time and public resources that could be better utilized in cases with merit. Moreover, prolonged proceedings without reasonable prospect of conviction undermine public confidence in the justice system and bring the law into disrepute. The applicant's right to liberty, dignity, and fair treatment are not merely abstract constitutional concepts but living rights that demand judicial protection. The process of criminal trial, even if ultimately resulting in acquittal, inflicts irreparable damage on an individual's reputation, financial resources, and psychological well-being. Where there is no reasonable prospect that such trial will serve the cause of justice, the Court has both the power and the duty to intervene to protect individual rights.

22. In light of the foregoing comprehensive deliberation, and while keeping in view the constitutional guarantees, established jurisprudence, and fundamental principles of criminal justice, I hold that there exists no probability whatsoever of conviction of the present applicant on the basis of the material available. The prosecution case against him is not merely weak, it is non-existent. The dicta laid down in

Hameedullah v. The State (2013 P.Cr.L.J 923) and *Muhammad Saleem Khan v. The State* (2009 MLD 1059) find direct application to the facts of the present case. The continuation of proceedings would amount to abuse of the process of Court and violation of the applicant's fundamental rights guaranteed under the Constitution. The maxims "*Ei incumbit probatio qui dicit, non qui negat*", "*Actori incumbit probatio*", and "*Suspicio non probatio*" combine to establish that the prosecution has failed to discharge its fundamental burden of establishing even a *prima facie* case against the applicant.

23. In exercise of the inherent jurisdiction of this Court under Section 561-A Cr.P.C., and guided by the principles of natural justice, constitutional guarantees of fair trial, and the imperative to prevent abuse of judicial process, this bail application was converted into a Criminal Miscellaneous Application. In terms of Section 265-K Cr.P.C., and in furtherance of the ends of justice, applicant Mehmood Khan s/o Muhammad Haneef was acquitted of the charge in Crime No. 09 of 2021 of P.S. ANF Sukkur under Sections 9(c), 14 and 15 of the Control of Narcotic Substances Act, 1997 vide short order dated 08.08.2025. He was directed to be released forthwith, if not required in any other custody case. These are detailed reasons thereof.

JUDGE