

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Criminal Bail application No.S-1031 of 2025

Applicant : Ayaz Lakho s/o Raza Muhammad through
Mr. Mian Taj Muhammad Keerio, advocate.

Respondent : The State, through Ms. Safa Hisbani, Assistant
Prosecutor General, Sindh.

Date of hearing : **25.09.2025**
Date of order : **25.09.2025**

ORDER

TASNEEM SULTANA, J.- Through this bail application, the applicant Ayaz Lakho seeks post arrest bail in Crime No.54 of 2025, under Sections 9 (i) 3 (C) The Sindh Control Of Narcotic Substances Act, 2024 (SCNSA), registered at PS Saeedabad, after his post arrest bail application was declined by the learned Sessions Judge/Special Judge CNS, Matiari, vide order dated 26.08.2025.

2. It is alleged that on 10.05.2025 police party of PS Saeedabad headed by SIP Shazado Rahoo apprehended applicant/accused Ayaz Ali s/o Raza Muhammad Lakho near New Saeedabad College on being found in possession of 2500 grams Charas contained in a black shopper under memo of arrest & recovery prepared in presence of HC Ghulam Akbar and PC Muhammad Aslam; for that he was booked in the aforementioned FIR.

3. Learned counsel for the applicant contended that the applicant/accused is innocent and has been falsely implicated by the complainant; that the alleged place of arrest and recovery is a thickly populated area, yet no private person was associated to witness the alleged proceedings; that except for the version of the police, there is no independent material to connect the applicant/accused with the commission of the alleged offence; that the complainant relied solely on his subordinate staff and failed to associate private witnesses, which weakens the prosecution case. In support of his contentions he has relied upon 2024 SCMR 934 (*Zahid Sarfaraz Gill versus The State*) and 2025 MLD 128 (*Muhammad Yousif Jatoi versus The State*).

4. Conversely learned APG opposed the instant bail application and contended that applicant/accused is nominated in FIR and huge quantity of narcotic substance has been recovered from his exclusive possession; that the

offence falls within the ambit of prohibitory clause of S.497 (1) Cr.PC; that no malafide on the part of police for false implication of applicant/ accused has been established; that the FIR has been registered promptly and property has been dispatched to the laboratory for analysis within time.

5. Heard and record perused.

6. It reflects from the record that the applicant/accused was apprehended at the spot and 2500 grams Charas was recovered from his personal possession. The alleged offence falls under Section 9(1) (3) (c) of the SCNSA, which is punishable with imprisonment that may extend to 14 years but shall not be less than 9 years, along with a fine up to five hundred thousand rupees, but not less than one hundred thousand rupees. In the case of *Jabran and another versus The State through Director General FIA and others* (2025 SCMR 1099) Hon'ble Supreme Court of Pakistan has discussed the question of imposition of maximum sentence. The relevant portion is reproduced as under:-

"6. We have gone through the referred judgements and have not been persuaded by the argument of the learned counsel that the minimum period of sentence is to be considered at bail stage for the purpose of section 497(1) Cr.P.C. Such interpretation is not supported by any law or subsequent jurisprudence established by this Court. At bail stage, the Court is not to undertake any speculative exercise or guess work regarding the probable length of sentence that will likely be awarded at the end of a trial. Doing so would amount to a deeper appreciation of evidence, which is prohibited at bail stage. Additionally, any such attempted categorization of sentencing or speculation at bail stage could prejudice future proceedings by pre-empting the mind of the Trial Court."

In recent judgment in *Barkat Ullah versus The State and another*, Crl. Misc. No. 431-B/2024 it is held by Larger Bench of Islamabad High Court that:-

"(a) The expression "punishable" used in section 497(1) Cr.P.C. refers to the maximum punishment provided for an offence. Thus if an offence is punishable by ten years or more, then subject to other legal grounds, the same would attract statutory prohibition contained in section 497(1) Cr. P.C. and

(b) It is held that if provision of the Act of 1997 provides for maximum punishment of ten years and more, it shall attract the prohibitory clause of section 497(1), Cr.P.C. The applicability of the term "borderline case" developed in the context of erstwhile provisions of the Act of 1997 i.e. section 9(c), would amount to anticipating possible period of conviction at bail stage, which exercise is not permissible while making tentative assessment of a criminal case."

In another case of *Muhammad Aslam versus The State* (2023 SCMR 2056) Hon'ble Supreme Court of Pakistan has observed as under:-

“The offence is heinous in nature as it contributes to the menace of drugs having grave repercussions on the society. Prima facie the material available on the record connects the petitioner with the commission of the crime. The offence falls within the prohibitory clause of section 497, Cr.P.C. The impugned order is well reasoned, proceeds on correct principles of law on the subject and does not call for interference by this Court.”

7. The said offence, therefore, falls within the ambit of prohibitory clause of Section 497 CrPC read with bar contained in Section 35 of SCNSA. Therefore, there is prima face sufficient material on the record to believe involvement of the applicant/accused in the alleged offence.

8. Adverting to the contention of the learned counsel for the applicant that during arrest and recovery proceedings provisions of section 17 of the SCNSA were not followed, which creates serious doubt in the arrest and recovery proceedings. In this context learned counsel for the applicant referred case of *Zahid Sarfaraz Gill reported in (2024 SCMR 934)*. For the purpose of understanding Section 17 of SCNSA is reproduced as under:-

17. *Power of entry, search, seizure, and arrest without warrant:*

(1) Where an officer, not below the rank of Inspector of Narcotics Control or equivalent authorized in this behalf by Director General Narcotics Control Sindh, who from his personal knowledge or from information given to him by any person is of opinion that any narcotic drug, psychotropic substance, precursor chemicals or controlled substance and methamphetamine in respect of which an offence punishable under this Act has been committed is kept or concealed in any building, place, premises or conveyance, and a warrant for arrest or search cannot be obtained against such person without affording him an opportunity for the concealment of evidence or facility for his escape, such officer may-

(a) enter into any such building, place, premises or conveyance;

(b) break open any door and remove any other obstacle to such entry in case of resistance;

(c) seize such narcotics drugs, psychotropic substances, precursor chemical, controlled substances and other materials used in the manufacture thereof and any other article which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act; and

(d) detain, search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed an offence punishable under this Act; and

(2) The video recording of all raids, seizures, inspections and arrests shall be made by the officer in-charge of such operations.

(3) Before or immediately after taking any action under subsection (1), the officer referred to in that sub-section shall record

the grounds and basis of his information and proposed action and forthwith send a copy thereof to his immediate superior officer.

(4) All the offences under this Act shall be cognizable and non bail-able.”

9. A plain reading of the above provisions of law makes it manifestly clear that video recording is mandatorily required in cases where a search of a building, place, conveyance, or premises is conducted for narcotic drugs, psychotropic substances, precursor chemicals, controlled substances, or methamphetamine, in respect of which an offence punishable under the SCNSA, 2024, has been committed, and where obtaining a search warrant promptly is not possible. The case of the applicant, however, stands on a different footing, as he was apprehended from a road near New Saeedabad College and huge quantity of charas was recovered from his possession; hence, his arrest does not fall within the ambit of section 17, supra. The Honourable Supreme Court, in the case of *Zahid Sarfaraz Gill (2024 SCMR 934)*, while granting bail, observed the necessity of video recording of arrest and recovery proceedings through built-in mobile cameras, particularly when the arrest was effected from a public street in a populated area during evening hours. The facts and circumstances of the present case are, therefore, distinguishable, since the accused herein was apprehended from a Road in morning.

10. In view of the red-handed arrest of the applicant along with a substantial quantity of charas, duly confirmed through a positive forensic report, his case squarely falls within the prohibitory clause contemplated under section 497, Cr.P.C. Prima facie, sufficient incriminating material is available on record connecting him with the commission of the offence; therefore, no case for grant of bail is made out. Consequently, this bail application is dismissed.

11. Needless to observe, the trial Court shall proceed independently on the basis of evidence adduced before it, uninfluenced by the observations made hereinabove.

JUDGE

Irfan Ali