

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. D-94 of 2025

**Before:**

***Mr. Justice Amjad Ali Bohio, J.***

***Mr. Justice Khalid Hussain Shahani, J.***

Applicant : Ghulam Sarwar @ Haji son of Allah Warrayo,  
by caste Machi  
Through Mr. Sajid Ali Kalhoru, Advocate.

The State : Through Syed Sadar Ali Shah, Addl. P.G for State

Date of hearing : 22.10.2025

Date of Order : 04.11.2025

## **ORDER**

**KHALID HUSSAIN SHAHANI, J.** – Through this Criminal Bail Application under Section 497 Cr.P.C, the applicant Ghulam Sarwar @ Haji son of Allah Warrayo Machi seeks post-arrest bail in Crime No.153/2025, for offence punishable under Section 9(1) (3-C) of the Sindh Control of Narcotic Substances Act, 2024 (hereinafter referred to as "SCNS Act 2024"), registered at Police Station Moro, District Naushahro Feroze. His earlier bail application was dismissed by the learned Special Judge for CNS, Naushahro Feroze, vide order dated 01.09.2025.

2. The brief facts of the prosecution case, as unfolded in the FIR lodged by complainant ASI Abdul Majeed Dahar of Police Station Moro on 11.05.2025 at 0900 hours, are that on 11.05.2025 at about 0800 hours, the complainant along with his subordinate staff, namely PC Ashir Siyal and PC Anwar Ali, in uniform with government ammunition on government vehicle bearing registration No. SPF-509, with DPC Wahid Bux, departed from Police Station Moro vide roznamcha entry No.29 of 0700 hours for patrolling duties within the jurisdiction. During their patrol on National Highway road leading towards Lalo Machi, they noticed a person carrying a black shopper who, upon seeing the government vehicle, attempted to run back. The police party immediately stopped and apprehended the person. Upon inquiry, the

arrested person disclosed his name as Ghulam Sarwar @ Haji son of Allah Rakhio Machi, resident of village Tapal Machi, Taluka Moro. The complainant states that due to the unavailability of private mashirs, PC Ashir Siyal and PC Anwar Ali were nominated as mashirs. The prosecution alleges that upon conducting a body search of the applicant, a black shopper was recovered containing charas weighing 2000 grams, along with currency notes totalling Rs.500/- (five notes of Rs.100 each). From the recovered *charas*, 50 grams were sealed as a sample for chemical examination, while the remaining quantity was sealed separately. A mashirnama was prepared in the presence of the nominated mashirs. The applicant was arrested and taken to the police station, where the FIR was lodged. During investigation, the chemical examination report confirmed the presence of charas. The applicant was subsequently charged under Section 9(1) (3-C) SCNS Act 2024, which prescribes punishment up to fourteen years, not less than nine years, besides fine. The applicant was produced before the learned Special Judge for CNS, Naushahro Feroze who dismissed his first bail application on 01.09.2025. The applicant remains confined at District Jail, Naushahro Feroze.

3. Mr. Kalhor, learned counsel for the applicant has strenuously contended that the entire prosecution narrative is false, fabricated, and tainted with malafide intention. He submits that the alleged narcotic drug has been foisted upon the applicant and no genuine incident occurred as described in the FIR. Learned counsel argues that the present case is the result of malafide harassment and political victimization, as the applicant's father is a former Member of the District Council who opposed the ruling political party, and the police is allegedly registering false cases to pressurize the applicant's family to join the current ruling party. He further submits that

the applicant was not arrested from the alleged place of incident but was illegally detained from the premises of Moro Court. He emphasizes that the complainant is an ASI, who under the SCNS Act 2024 is not competent to register narcotics cases; only a Sub-Inspector or higher officer is authorized to do so. This procedural lapse, according to learned counsel, constitutes a fatal defect rendering the entire proceedings nugatory. Learned counsel further submits that the recovery is highly suspicious due to multiple procedural infirmities. He draws the attention of this Court to the glaring absence of video or photographic evidence of the alleged recovery, despite the explicit mandate under Section 17(2) of SCNS Act 2024, which requires video recording of all raids, seizures, inspections, and arrests. He relies upon the landmark judgment of the Supreme Court of Pakistan in *Muhammad Abid Hussain v. The State* (2025 SCMR 721), wherein the Honorable Supreme Court held that photography and videography of the recovery process in narcotics cases is not optional but mandatory, and failure to preserve proceedings through video recording renders the prosecution case highly suspicious. Similarly, he cites *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934), wherein bail was granted due to the absence of video evidence and lack of independent witnesses. Learned counsel emphasizes that the non-association of independent private witnesses despite the alleged recovery occurring at a populated area on the National Highway is a critical procedural lapse that seriously undermines the credibility of the prosecution case. He submits that the witnesses are interested parties being police officials under the command of the complainant. He further contends that the failure to weigh the shopper separately, the vague description of the alleged contraband in the FIR, and the circumstance that only 50 grams were sent for chemical examination instead of the entire quantity, all raise serious doubts

about the authenticity of the alleged recovery. Most significantly, he submits that the assumption that a person possessing 2000 grams of *charas* would have only Rs.500/- in cash is unreasonable and defies common sense. Learned counsel prays that in view of the multiple procedural lapses, the absence of video evidence, the lack of independent witnesses, and the questions regarding the competence of the complainant, the applicant may graciously be admitted to post-arrest bail, as the case falls squarely within the domain of further inquiry.

4. The learned Additional Prosecutor General, appearing on behalf of the State, has opposed the grant of bail to the applicant. He submits that the offence under Section 9(1) (3-C) SCNS Act 2024 prescribes stringent punishment, falling within the prohibitory clause under Section 35(1) of the Sindh Control of Narcotic Substances (Amendment) Act, 2025, and therefore bail should ordinarily be declined. He contends that the applicant was arrested red-handed in possession of a substantial quantity of *charas* weighing 2000 grams, which constitutes a serious threat to society. He submits that the recovery was effected during routine patrolling, which does not fall within the scope of "operations" as contemplated in Section 17(2) of the SCNS Act 2024, and therefore video recording, while desirable, is not mandatory in the instant case. He further submits that Section 103 Cr.P.C is inapplicable due to Section 20 of the SCNS Act 2024, which excludes the requirement of association of private witnesses in narcotics cases. The learned Addl. P.G argues that the applicant has not substantiated his allegations of malafide or political victimization, and the prosecution case is supported by positive chemical examination report. He prays that the bail application be dismissed in view of the gravity of the offence and the substantial quantity of contraband involve.

5. Having heard the learned counsel for the applicant and the learned Addl. P.G for the State at considerable length, having examined the available record with their able assistance, and having carefully considered the relevant case law, particularly the recent pronouncements of the Honorable Supreme Court of Pakistan, this Court now proceeds to deliberate upon the merits of the present application.

6. At the outset, this Court deems it appropriate to observe that while narcotics-related offences are undoubtedly serious crimes that pose a grave and undeniable threat to the social fabric and moral fabric of society, and while the State's vigorous prosecution of drug trafficking deserves full recognition and support, it is equally important that the inviolable rights of the accused are scrupulously protected and that investigations and prosecutions are conducted in strict accordance with established legal procedures and constitutional safeguards. The severity of punishment prescribed for an offence necessitates an equally stringent standard of proof and procedural compliance to ensure that innocent persons are not falsely implicated and unjustly incarcerated.

7. It is a well-established principle of criminal jurisprudence that at the bail stage, the court is not required to conduct a mini-trial or meticulously weigh the evidence as if adjudicating the guilt or innocence of the accused. The function of this Court at this preliminary stage is to *prima facie* evaluate whether the case requires further inquiry, whether reasonable grounds exist to believe that the accused may not have committed the offence, and whether the prosecution case suffers from material contradictions or procedural infirmities that cast serious doubt on its veracity. The cardinal principle is that bail is the rule and jail is the exception. The object of bail is to secure the attendance of the accused at trial while preserving the presumption of

innocence. Even a single day's detention of an innocent person is an injustice that cannot be adequately compensated, even if such person is ultimately acquitted. Reliance in this regard is placed on the observations of the Honorable Supreme Court in *Manzoor v. The State* (PLD 1972 SC 81), wherein it was held that the ultimate incarceration of a guilty person could repair the wrong caused by mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case, albeit his acquittal in the long run.

8. A careful perusal of the FIR, the grounds raised in the bail application, the impugned order of the learned trial court, and the record before this Court reveals several disturbing procedural lapses and infirmities in the prosecution case that merit serious consideration.

9. The first and most critical procedural deficiency concerns the competence of the complainant. It is an admitted and indisputable fact that the FIR has been lodged by ASI Abdul Majeed Dahar. Section 17(1) of the Sindh Control of Narcotic Substances Act, 2024, read with the relevant provisions of the Act, contemplates that investigations into narcotics offences shall be conducted by officers of the rank of Sub-Inspector and above. The legislative scheme makes abundantly clear that ASI rank personnel are not authorized to register FIRs in narcotics cases nor to conduct investigations. This is not merely a procedural formality but a fundamental safeguard embedded in the statute to ensure that serious narcotics offences are handled by appropriately trained and authorized officers. The fact that an ASI lodged the FIR constitutes a fundamental defect in the very foundation of the prosecution case. While one would have expected the learned trial court to have addressed this critical issue, its order remains silent on this

material point. At the bail stage, when the case requires prima facie scrutiny, the unauthorized registration of the FIR by an incompetent officer gives rise to serious doubts about the legality and regularity of the entire proceedings.

10. The second major procedural infirmity relates to the complete and admitted absence of video or photographic evidence of the alleged recovery proceedings. It is an uncontroverted fact that no video recording or photographic evidence was made or preserved by the investigating agency. This is a critical deficiency that goes to the heart of the credibility and reliability of the prosecution case. The Honorable Supreme Court of Pakistan in the landmark judgment of *Muhammad Abid Hussain v. The State* (2025 SCMR 721) has categorically and unequivocally held that the Control of Narcotic Substances Act prescribes severe punishments for the possession and sale of narcotic substances, and given the gravity of the penalties, the standard of proof required to establish guilt must be correspondingly high. The prosecution must demonstrate beyond reasonable doubt that the accused was in possession of the narcotic substance. The Supreme Court in the aforementioned judgment emphasized that Article 164 of the *Qanun-e-Shahadat* Order, 1984 expressly recognizes the importance of modern devices and techniques in the collection of evidence and provides that evidence obtained through modern devices, such as video recordings, should be given due weight in judicial proceedings. This provision underscores the imperative need for law enforcement agencies to adopt contemporary methods to ensure the accuracy and reliability of evidence. The Court observed with concern that in the case before it, neither any video recording nor photographs of the alleged recovery were collected by the police, nor was any private witness from the locality associated to prove the alleged recovery from the possession of the accused. Most significantly, the Supreme

Court held that the use of modern devices during recoveries is not merely a procedural formality but a crucial safeguard to protect innocent persons from potential police atrocities. It provides an objective and unbiased account of the recovery process, reducing the risk of false implications and ensuring that the rights of the accused are protected. In cases involving stringent punishments, the prosecution must present clear, cogent, and reliable evidence to prove the guilt of the accused beyond reasonable doubt.

11. The applicant in the present case draws attention to Section 17(2) of the Sindh Control of Narcotic Substances Act, 2024, which explicitly provides that "*video recording of all raids, seizure, inspections and arrests shall be made by the officer in charge of such operations.*" The plain language of this provision makes it abundantly clear that video recording is mandatory. The learned Deputy Prosecutor General has attempted to circumvent this mandatory requirement by arguing that the applicability of Section 17(2) is limited to planned "operations" and does not extend to routine checking. However, this Court is constrained to observe that such reasoning is not only inconsistent with the legislative intent but also contrary to the authoritative pronouncements of the Supreme Court in *Muhammad Abid Hussain and Zahid Sarfaraz Gill v. The State* (2024 SCMR 934). The Supreme Court in *Zahid Sarfaraz Gill* expressed bewilderment as to why the police and Anti-Narcotics Force personnel do not use video or photographic documentation during searches and seizures, particularly when Article 164 of the *Qanun-e-Shahadat* Order, 1984 renders evidence obtained through modern techniques admissible in courts. The Court held that the facts and circumstances of that case made it a case of further inquiry, and accordingly granted bail. While this Court acknowledges that there may be operational distinctions between a planned raid based on prior information and a routine

snap check, such distinction cannot be stretched to the extent of completely exempting investigating agencies from the requirement or at minimum the expectation of employing available modern recording devices. The purpose of Section 17(2) and the Supreme Court's directives is to ensure transparency, accountability, and protection of the rights of accused persons through objective electronic documentation. This purpose is equally compelling whether the arrest occurs during a planned operation or during routine checking. Moreover, even if one were to strictly interpret Section 17(2) as inapplicable to routine checking, the investigating agency was not precluded from voluntarily recording the proceedings through video or photography. As held by the Supreme Court in *Muhammad Abid Hussain*, Article 164 of the *Qanun-e-Shahadat* Order, 1984 encourages and permits the use of modern devices for evidence collection, and such evidence carries significant probative value. The failure to utilize such readily available technology, particularly when serious allegations are being made and substantial quantities of contraband are allegedly being recovered, raises legitimate concerns about the authenticity and credibility of the alleged recovery.

12. The third major procedural infirmity relates to the non-association of independent, neutral witnesses during the alleged recovery proceedings. It is the admitted case of the prosecution that the alleged recovery took place on the National Highway road leading towards Lalo Machi at approximately 0800 hours in the morning. While Section 20 of the SCNS Act 2024 excludes the applicability of Section 103 Cr.P.C, which mandates the association of respectable inhabitants of the locality as witnesses, this exclusion does not absolve the investigating agency from ensuring transparency and credibility in recovery proceedings through the

association of independent witnesses wherever feasible. The FIR itself admits that due to "unavailability of private mashirs," two police constables, namely PC Ashir Siyal and PC Anwar Ali, were nominated as mashirs. However, no adequate explanation has been provided as to why private witnesses were unavailable at 0800 hours on a main road, which is described as a National Highway and would presumably be a populated area with vehicular and pedestrian traffic. The prosecution has failed to demonstrate that any genuine effort was made to secure the presence of independent witnesses. The reliance solely on police officials as witnesses, who are subordinates of the complainant and interested parties, significantly diminishes the credibility of the prosecution case, particularly in the absence of video or photographic corroboration. It is a well-settled principle of law that where the prosecution case rests entirely on the testimony of police officials without corroboration by independent witnesses or electronic evidence, the benefit of doubt must be extended to the accused, particularly at the bail stage. In the case of *Muhammad Arshad v. The State* (2022 SCMR 1555), the Honorable Supreme Court held that where the prosecution's case hinges entirely on police testimony, uncorroborated by natural witnesses, the benefit of doubt is to be extended at the bail stage.

13. The fourth significant infirmity concerns the incomplete and inadequate description of the alleged recovered contraband in the FIR. The FIR does not provide a detailed description of the alleged charas, including the specific measurement and weight of each piece or portion recovered. Such omissions are particularly significant when substantial quantities are involved, as they create ambiguity and raise questions about the authenticity of the alleged recovery. The learned trial court overlooked this material aspect entirely.

14. Another aspect that merits consideration is the illogicality of the alleged recovery vis-à-vis the cash allegedly recovered. The applicant has submitted that it is unreasonable and defies common sense that a person allegedly in possession of 2000 grams of charas would have only Rs. 500/- in cash. Such an inconsistency, while not conclusive, raises serious doubts about the credibility of the prosecution narrative, particularly when coupled with the other procedural lapses.

15. The question of safe custody and safe transmission of the allegedly recovered narcotic also merits consideration. The Honorable Supreme Court of Pakistan in the case of *Jeehand v. The State* (2025 SCMR 923) has emphatically held that safe custody and safe transmission of alleged drugs from the spot of recovery till their receipt by the Narcotic Testing Laboratory must be satisfactorily established. The Police Rules mandate that case property be kept in the Malkhana and that entry thereof be recorded in Register No. XIX of the police station. It is the duty of the police and prosecution to establish that the case property was kept in safe custody, and if it was required to be sent to any laboratory for analysis, to further establish its safe transmission and that the same was also recorded in the relevant registers, including road certificates. The Court in *Jeehand* observed that documentary proof of safe custody and transmission of case property is mandatory, and oral testimony without production of Register No. XIX or road certificates is inadmissible under Article 102 of the *Qanun-e-Shahadat* Order, 1984. The Supreme Court in the case of *Mst. Sakina Ramzan v. The State* (2021 SCMR 451) expounded the concept of chain of custody in great detail. The Court held that the chain of custody or safe custody and safe transmission of narcotic drugs begins with seizure of the narcotic drug by the law enforcement officer, followed by separation of the representative

samples of the seized narcotic drug, storage of the representative samples and the narcotic drug with the law enforcement agency, and then dispatch of the representative samples to the office of the chemical examiner for examination and testing. This chain of custody must be safe and secure because the report of the chemical examiner enjoys critical importance under the Control of Narcotic Substances Act, and the chain of custody ensures that correct representative samples reach the office of the chemical examiner. Any break or gap in the chain of custody, i.e, in the safe custody or safe transmission of the narcotic drug or its representative samples, makes the report of the chemical examiner unsafe and unreliable for justifying conviction of the accused. In the present case, there is no indication on record that the prosecution has established or can establish the safe custody and safe transmission of the allegedly recovered contraband through documentary evidence such as Register No. XIX entries, road certificates, or other contemporaneous records. Furthermore, the fact that only 50 grams sample from each batch of narcotic was sent for chemical analysis, whereas according to proper procedure the entire quantity should have been sent to ensure accuracy and prevent any possibility of substitution or tampering, raises additional concerns. The question of whether the chain of custody has been properly maintained will inevitably arise during trial and will require careful scrutiny and proof. At this stage, the absence of such documentation creates reasonable doubt about the integrity of the case property and the reliability of any future chemical examination report.

16. The cumulative effect of all these procedural infirmities and lapses is to cast serious doubt on the credibility and authenticity of the prosecution case. Section 497(2) Cr.P.C. provides that bail may be granted if there appear to be reasonable grounds for believing that the accused is not

guilty of the offence or that the case requires further inquiry. The concept of "further inquiry" is well-established in our jurisprudence and has been consistently interpreted to mean that where the prosecution case suffers from material contradictions, procedural irregularities, or other infirmities that cast doubt on the veracity of the allegations, the accused is entitled to bail pending trial.

17. In the present case, multiple factors cumulatively establish that this is a classic case requiring further inquiry:

- (a) *The registration of the FIR by an ASI, who is not competent under the SCNS Act 2024 to register narcotics cases, constituting a fundamental defect in the legal foundation of the prosecution case.*
- (b) *The complete absence of video or photographic evidence of the alleged recovery despite the mandatory requirement under Section 17(2) SCNS Act 2024 and the authoritative pronouncements of the Supreme Court.*
- (c) *The non-association of independent witnesses from what is admittedly a busy location on the National Highway, coupled with sole reliance on police officials as witnesses who are subordinates of the complainant and interested parties.*
- (d) *The illogicality of the alleged recovery, wherein a person possessing 2000 grams of charas allegedly had only Rs. 500/- in cash.*
- (e) *The lack of documentary evidence establishing safe custody and safe transmission of the allegedly recovered contraband, which is a mandatory requirement under the law as expounded by the Supreme Court in Jeehand.*
- (f) *The fact that only 50 grams sample from the narcotic was sent for chemical analysis, whereas according to proper procedure, the entire quantity should have been sent to ensure accuracy and prevent tampering.*
- (g) *The vague and incomplete description in the FIR regarding the alleged contraband.*
- (h) *The allegations raised by the applicant regarding political victimization and malafide on the part of the police, though not conclusively proven at this stage, raise questions about the motivation behind the arrest and registration of the FIR.*

18. These cumulative infirmities and procedural lapses raise serious doubts about the authenticity and credibility of the prosecution case and establish that the matter requires further inquiry through a full trial. The principles laid down in *Muhammad Abid Hussain v. The State* (2025 SCMR 721), *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934), and *Jeehand v. The State* (2025 SCMR 923) are squarely applicable to the facts of the present case.

19. This Court is acutely conscious of the grave threat posed by the proliferation of narcotics to the health, welfare, and moral fiber of society. The scourge of drug addiction has devastated countless families and communities, and the State's resolute endeavor to eliminate this menace warrants unqualified support. However, the fight against narcotics must be conducted within the framework of law and in accordance with constitutional safeguards and principles of due process. The ends, however laudable, cannot justify means that trample upon fundamental rights or disregard mandatory legal procedures. The presumption of innocence is a cornerstone of our criminal justice system and a fundamental right guaranteed under Article 4 and Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973. This presumption remains intact until guilt is established through a fair trial conducted in accordance with law. The liberty of an individual is a precious right that cannot be curtailed except through due process of law.

20. In the present case, the multiple procedural lapses and infirmities discussed above create reasonable doubt about the veracity of the prosecution case. The failure to record video or photographic evidence despite mandatory requirements and authoritative judicial pronouncements, the non-association of independent witnesses from a populated area, the

registration of the FIR by an incompetent officer, the questions regarding safe custody and transmission, the illogical aspects of the alleged recovery, and the incomplete documentation, cumulatively establish that this is a fit case for grant of bail pending trial. The applicant's continued incarceration under these circumstances would amount to pre-trial punishment, which is impermissible under our legal system.

21. For the reasons elaborated above, and in view of the authoritative pronouncements of the Honorable Supreme Court of Pakistan in *Muhammad Abid Hussain v. The State* (2025 SCMR 721), *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934), *Jeehand v. The State* (2025 SCMR 923), and *Mst. Sakina Ramzan v. The State* (2021 SCMR 451), this Court is of the considered view that the prosecution case against the applicant suffers from serious procedural infirmities and irregularities that cast reasonable doubt on its credibility and veracity. The registration of the FIR by an incompetent ASI officer, the complete absence of video or photographic evidence in contravention of mandatory legal requirements, the non-association of independent witnesses, the lack of proper documentation regarding safe custody and transmission of case property, the illogicality and incompleteness of the alleged recovery, and the inadequacy of procedural compliance throughout the investigation, establish that the present case falls squarely within the ambit of "further inquiry" as contemplated under Section 497(2) Cr.P.C. It is pertinent to observe that this Court, while granting bail, has not expressed any final opinion on the merits of the prosecution case. The observations made herein are tentative and for the limited purpose of deciding the bail application. The learned trial court will examine and appreciate the evidence in accordance with law, uninfluenced by any observations made in this order.

22. Consequently, this Criminal Bail Application is allowed. The applicant Ghulam Sarwar Haji son of Allah Rakhio Machi is admitted to post-arrest bail subject to his furnishing bail bonds in the sum of Rs.100,000/- (Rupees One Hundred Thousand only) with solvent surety in the like amount to the satisfaction of the learned trial court. It is further clarified that the observations made in this order are tentative in nature and are solely for the purpose of deciding the instant bail application. The learned trial court shall decide the case on its own merits, uninfluenced by any observations made herein.

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