IN THE HIGH COURT OF SINDH AT KARACHI

Present: Mr. Justice Jawad Akbar Sarwana

Criminal Bail Application No.1912 of 2025

Applicant	:	Najeebullah, through Mr. Muhammad Munir Ahmed Advocate
Respondent	:	The State, through Mr. Mohsin Mangi, APG Sindh
Date of Hearing	:	11.09.2025
Date of Decision	:	01.10.2025

O R D E R

Jawad Akbar Sarwana, J.: Through this post-arrest bail application, the **applicant/accused, Najeebullah s/o Allah Muhammad,** proclaimed offender, seeks bail in FIR No.84/2024 registered under Section 6/9-3(E) of the Control of Narcotic Substances (Amendment) Act, 2022 at P.S. Mochko. Earlier, the bail application filed by him in Special Case No.243/2024 (*Re: The State v. Najibullah*) in the Court of Special Judge for Control of Narcotic Substances/Additional Sessions Judge-II, West Karachi ("the trial Court"), was dismissed vide Order dated 25.06.2025.

2. I have heard the applicant/accused Counsel, the Additional Prosecutor General, Sindh and have perused the record, and my observations are as under:-

3. From the perusal of the FIR No.84/2024, and the record available on file, the case of the prosecution is that **the applicant/accused, is one out of the four (4) co-accused, which the trial Court later convicted of trafficking a large quantity of charas totaling 23kg and 780 grams charas** found in 10 packets of charas wrapped with yellow plastic tape weighing 11550 grams and 10 packets of charas wrapped with yellow plastic tape weighing 12230 grams. Because the applicant/accused was declared a proclaimed offender by the trial Court vide order dated 17.07.2024, the criminal case against him was kept on a dormant file until his arrest or

appearance before the trial Court vide the trial court's judgment dated 14.03.2025. Meanwhile, the three co-accused named in the said FIR, namely, (i) Safeer Ahmed s/o Nazeer Ahmed, (ii) Mst. Shahida w/o Zabihullah, and (iii) Mst. Ayesha d/o Zabiullah, were all found guilty and convicted and sentenced for a period of 20 years of rigorous imprisonment for the office punishable under Section 9(1)3(E) of CNS (Amendment) Act, 2022 and to pay fine of Rs.8,00,000 each; whereas the co-accused Manzoor Ahmed s/o Rasool Bukhsh was acquitted under Section 265-H(1) Cr.P.C. Therefore, the prosecution argued, given the convictions mentioned above of the three co-accused, the applicant/accused in question, based on the rule of consistency too, is not entitled to the concession of bail.

4. The Counsel for the applicant/accused contended that the applicant/accused is innocent; his name is not mentioned in the FIR No.84/2024; he was not caught red-handed with possession of the illegal narcotics; he was not found on the spot of the crime; he was arrayed as an accused based on the statements of the co-accused; his name was mentioned as the alleged supplier of the narcotic substance; no legal direct or circumstantial evidence was connecting the accused with the crime; and the statement of co-accused (even though the same were eventually convicted in the crime arising out of the case crime) could not be used as evidence against the applicant/accused in view of Article 38 of the Qanun -e- Shahdat, 1984, when such statement was made before the police. He further argued that the abscondence of applicant/accused does not amount to sufficient grounds to refuse bail to him; the right of bail could not be refused to accused merely on account of his alleged abscondence which is a factor relevant only to propriety; and absconsion per se could not be basis for refusal of bail in the absence of any overt set which had contributed towards commission of the offence. Therefore, this bench should grant bail to the applicant/accused.

5. At the outset, it is most surprising that the Counsel for the applicant/accused has alleged that the applicant/accused name was not mentioned in the FIR No.84/2024. As a matter of fact, the said FIR clearly mentions the name of the applicant/accused, Najeeb Ullah, that:

> "…On further enquiry, the above passengers revealed that the charas had received from Quetta which was given to them by Najeeb and they had also paid Rs.32,000/- for fare and saying that this charas has to be delivered to Lalu Khait…."

6. As a result of the name of the applicant accused mentioned in the FIR, the Charge Sheet dated 22.03.2024 submitted by the I.O. also, named Najeeb Ullah as a co-accused, and because he did not surrender himself, the applicant/accused name with his CNIC No.54202-6296155-3 was mentioned in the second column of the final challan as absconder. Yet, despite all such information, including his CNIC being available with the trial Court and I.O., Najeeb Ullah voluntarily remained a fugitive. He was declared a proclaimed offender on 17.07.2024, and, after the conviction of the three co-accused on 14.03.2025, and only after they had filed Cr. Appeal No.D-233/2025 in the High Court on 07.04.2025, which cr. appeal is still pending hearing in the High Court, was the applicant/accused arrested and taken into custody.

7. Meanwhile, according to the record available on file, Javed Iqbal, 40 y/o, HC-24049, in his cross-examination deposed before the trial Court, as PW-1 at Ex.3, on 30.10.2024, that:

> "...It is correct to suggest that it is mentioned in my statement u/s 161 Cr.P.C. about giving of Rs.32,000/- to accused by Najeeb as per Statement of the accused and such amount has also been recovered at the spot from the accused...."

8. Additionally, Muhammad Aijaz Memon, 57 y/o, SIP, in his cross-examination recorded before the trial Court, as PW-2 at Ex.4, on 12.11.2024, also deposed that:

> "...It is correct to suggest that contents of FIR reveals about disclosure of the accused about Rs.32,000/- for fare given by Najeeb. It is incorrect to suggest that I have not mentioned in my statement under section 161 Cr.P.C. about handing over the alleged chars Lalokhet…."

9. Further, Mst. Asiya Bibi, 39 y/o, who was also convicted vide the Judgment dated 14.03,2025, in her cross-examination deposed before the trial Court, as PW-4 at Ex.6, on 05.12.2024, that:

> "...The accused disclosed about taking the narcotic substances from Najeeb from Hub Chowki...."

10. It is pertinent to mention here that during the course of the investigation and/or trial, the three co-accused, whom the trial Court eventually convicted, applied for post-arrest bail from both the trial Court and the High Court, but they were consistently denied bail. Throughout this period, the applicant/accused remained a fugitive. He neither participated in the investigation nor faced the trial, all the while, the three co-accused were in custody. As a matter of fact, in the present case, neither the Counsel for the applicant accused during arguments nor the bail application has offered any explanation concerning the applicant's unawareness of the criminal case. In other words, no plea of alibi is articulated on behalf of the accused applicant. **Thus, there is a clear, unexplained, noticeable abscondence** on the part of the applicant/accused.

11. It is a well-established proposition of law that a fugitive from law and Courts loses some of the normal rights granted by the procedural and substantive law. It is also a well-established proposition too, discussed in several judgments of the Supreme Court, that unexplained noticeable abscondence disentitles a person to the concession of bail notwithstanding the merits of the case – the principle being that the accused, by his conduct, thwarts the investigation qua him in which valuable evidence (like persons involved in the production and supply

chain of narcotics, the person who who was going to take delivery of the narcotic substances allegedly in Lalo Khait, Karachi, recoveries, etc.) is lost or is made impossible to be collected (by his conduct). He cannot then seek a reward for such conduct (after voluntarily becoming a fugitive from law).[1] The Supreme Court has observed that long abscondence would not become irrelevant merely because the co-accused of the accused concerned has, during his absondence, been acquitted on consideration of the evidence led by the prosecution. The law, earlier laid down in respect of persons who become fugitives from law, does not leave anything in doubt in this regard. However it is correct that in some rare cases notwithstanding absondence the accused might be released on bail, for example, when the accused is a woman, a child or a sick and infirm person or when he otherwise becomes entitled to bail as of right under Section 497(2) Cr. P.C. and/or the so-called abscondence is satisfactorily explained by the accused so as to establish that in reality it did not amount to abcondence.[2] The instant bail application is one of noticeable absconding by the applicant/accused.

12. While it is true that, based on the points raised in paragraphs 5 to 9 described above, a case for further inquiry for the applicant accused may be made out, yet, such a further inquiry needs to be made in relation to the FIR, the final challan, statements of the co-accused, and the cross-examination; and according to the Prosecution, the I.O. has yet to commence such investigation/inquiry. Further, no trial proceedings have commenced regarding the applicant/accused to date. Therefore, the point at this stage of the bail application is even if a case for further investigation has been made out, which is sufficient for this bench to grant the applicant accused the concession of bail in spite of the applicant accused's long absondence - almost two and a half (2.5) years - how much does his noticeable abscondence constitute a relevant factor for this bench examining the question of bail. As the Supreme Court has

[1] *Awal Gul v. Zawar Khan and Others*, PLD 1985 SC 402
[2] *Ibrahim v, Hayat Gul and others*, 1985 SCMR 382

observed,[3] this aspect must not be considered in isolation so as to keep a person behind the bar for an indefinite period. Mere abscondence by itself is also not sufficient to withhold the concession of bail when the applicant accused becomes entitled to the grant of bail. It is settled law that in a case calling for further inquiry into the guilt of an accused person, bail is to be allowed to him as of right and not by way of grace on concession, and in such a case, mere absconding of the relevant accused person may not be sufficient to refuse bail to him.[4] Indeed, although it is not an absolute rule that a fugitive should under no circumstances be enlarged on bail, yet absondence nevertheless still constitutes a relevant factor when examining the question of bail.[5]

13. In view of the above, as discussed in paragraphs 10 and 11, as the instant case for bail is also one of noticeable abscondence, the bail application cannot turn on the applicant/accused being merely a proclaimed absconder or generally a fugitive of law, alone. In addition to the points identified in paragraphs 10 and 11, and considering balancing these points with paragraph 12 concerning "further investigation", this bench has also considered, the applicant's past conduct, i.e. whether granting bail would increase the likelihood that he will evade trial. This is even more so because the applicant/accused has so far given no reason for absconding. As mentioned earlier, no plea of alibi has been articulated, and the same cannot come to his rescue now, at this late stage. To this bench, therefore, there appears a likelihood of the applicant/accused escaping from investigation and/or trial. Further, given the applicant's role, as alleged supplier in the crime and the conviction of the three co-accused felons, there also remains a likelihood of his repeating the alleged offence of trafficking narcotic substances,

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[3] *Said Nabi v. Ajmal Khan and Another*, 2024 SCMR 464; *Hidayat Khan v. The State*, 2023 SCMR 172; and *The State v. Malik Mukhtar Ahmed Awan*, 1991 SCMR 322;

[4] *Ehsan Ullah v. The State*, 2012 SCMR 1137; *Qamar alias Mitho v. The State and Others*, PLD 2012 SC 222; *Ibrahim v. Hayat Gul and Others*, 1985 SCMR 382; and *Muhammad Sadiq v. Sadiq and Others*, PLD 1985 SC 182

[5] *The State v. Malik Mukhtar Ahmad Awan*, 1991 SCMR 322

keeping in view the desperate manner in which he has prima facie acted after the commission of the offence alleged, leading up to his noticeable absence from trial without any explanation in his defence about his unawareness.

14. Given the above reasons, coupled also with the potential crime of allegedly trafficking 23kg 780 grams of charas, for which three co-accused in the FIR stand convicted, and the said judgment is pending hearing of appeal by the three felons (co-accused) in the High Court, the applicant/accused does not have a fit case for bail. Even otherwise, given the large quantity recovered, the prescribed punishment may extend to 14 years. In short, the applicant/accused has a lot to answer for. **Accordingly, the bail application is dismissed.**

15. Needless to state that the observations herein are tentative and nothing herein shall be construed to prejudice the case of either side at trial**.**

J U D G E