

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. D-107 of 2025

Applicants : 1) Muslim Khan s/o Shadiman Khan, Pathan
2) Barkat Ali s/o Noor Muhammad, Shaikh
Presently confined at Central Jail, Khairpur
Through Mr. Ghulam Murtaza Korai, Advocate

The State : *Through* Syed Sardar Ali Shah, Addl. P.G

Date of Hearing : 21.10.2025
Date of order : 12.11.2025

ORDER

KHALID HUSSAIN SHAHANI, J.— This order is intended to adjudicate upon the Criminal Bail Application under Section 497 Cr.P.C filed on behalf of the applicants Muslim Khan Pathan, and Barkat Ali for the grant of post-arrest bail in the matter arising from Criminal Case No.109/2025 registered at Police Station Baberloi, District Khairpur, for offence under Section 9(1) (3) (c) of the Sindh Control of Narcotic Substances Act, 2025 (Amendment) (hereinafter referred to as "SCNS Act"). Prior to this, their bail plea was declined by the Court of learned Additional Sessions Judge-I/(MCTC), Khairpur vide order dated 04.09.2025.

2. The prosecution case, as outlined in the F.I.R lodged by the complainant SIP Syed Ali Raza Shah at Police Station Baberloi on 03rd May 2025 is that, on the eventful day he along with his subordinate police staff, whilst patrol reached Qazi Wah, adjacent to the National Highway (NHW), Khairpur. At this location, the police observed three persons standing at the roadside, carrying a bag in their hands, and a white-colored Mehran car parked near them. Upon sighting the police vehicle, they attempted to flee the scene. The police apprehended all of them and recovered a large quantity of *charas (hashish)* from a bag and shoppers that were in their possession. A recovery memo was prepared on-site, purportedly associating staff members as mashirs. The arrested persons, along with the recovered contraband were brought to the police station, and the F.I.R was subsequently lodged on

behalf of the State against them. The applicant Muslim Khan was found in possession of 6,000 grams of *charas*, while the co-accused was found with 5,000 grams of *charas*, totaling 11,000 grams (11 kilograms) of a narcotic substance i.e massive quantity that clearly demonstrates the gravity of the offense and the scale of the alleged trafficking operation.”

3. The learned counsel for the applicants/accused, Mr. Ghulam Murtaza Korai, presented a comprehensive and multifaceted argument on behalf of his clients. The principal grounds that the learned counsel contended that the applicants/accused are innocent and have been falsely implicated by the police acting with malafide intention and ulterior motives. The counsel argued that no narcotic substance was recovered from the actual physical possession of the applicants/accused; rather, the alleged *charas* has been deliberately foisted and planted upon them through a pre-planned and engineered false case. The counsel emphasized that the innocence of the accused stands in sharp relief against the allegedly concocted narrative presented in the F.I.R. The learned counsel advanced a specific motive for the alleged false implication. It was argued that prior to the instant FIR, a previous criminal case (bearing number Cr. No.36/2025 under Section 9(3)(b) of the SCNS Act) was registered against Samiullah Pathan, the owner of the Lucky Marwat Hotel, by the police at District Sukkur. In that earlier case, the learned counsel highlighted that the High Court of Sindh granted bail to Samiullah Pathan. Significantly, the learned counsel further submitted that applicant No.2 (Barkat Ali) had furnished surety on behalf of Samiullah Pathan in the aforementioned case. The counsel argued that consequent to these facts, the police, harboring a deep-seated grudge against the applicants/accused due to their association with the hotel owner, engineered the instant false case as a retaliatory measure and an act of vendetta. The counsel placed considerable reliance upon the mandatory

requirement contained in Section 17(2) of the SCNS Act, 2024 (as amended). This provision requires that recovery proceedings in narcotics cases must be recorded through video documentation. The counsel contended that in the present case, no such video recording exists, thereby creating a material procedural lacuna in the investigation and evidence-collection process. The absence of this mandated video documentation, according to the counsel, constitutes evidence of investigative shortcomings that necessitate a ground for "further inquiry" and, by extension, warrants the grant of bail to permit more complete trial-stage investigation and scrutiny.

4. The learned counsel for applicants next argued that the recovery proceedings were fundamentally defective due to the complete absence of independent private witnesses from the general public. The counsel emphasized that all individuals associated as mashirs (witnesses) to the arrest and recovery were police officials and subordinates of the complainant. The counsel submitted that in a thickly populated area such as Qazi Wah on the National Highway where numerous private citizens could easily have been identified and associated as mashirs the police deliberately and culpably failed to do so. The counsel relied upon principles established in the reported judgment (2006 MLD 1961), which emphasizes the cardinal importance of independent private witnesses in criminal investigations, particularly in cases involving the seizure and recovery of contraband substances. The deliberate omission to associate such independent witnesses, the counsel argued, engenders serious and substantial doubts regarding the genuineness, credibility, and truthfulness of the prosecution's version of events. The learned counsel submitted that the pivotal question whether the alleged recovery was truly affected from the possession of the applicants/accused or whether it was foisted and planted upon them through police manipulation constitutes a matter requiring careful determination at the stage of trial, not

at the bail stage. The counsel argued that at the bail stage, such contested factual questions cannot be definitively resolved and that the case merits a finding of "further inquiry," which is an established and recognized ground for the grant of bail under Section 497(2) Cr.P.C. The learned counsel advanced the argument that the applicants/accused have now been in custody for an extended period and cannot be detained indefinitely pending the conclusion of trial proceedings. The counsel argued that since all the prosecution witnesses (PWs) and mashirs in the case are police officials and subordinates of the complainant, there is no useful purpose or legitimate investigative interest served by continuing the detention of the applicants/accused in jail. The counsel further submitted that, with the investigation now substantially complete and the applicants/accused already in institutional custody, they are no longer required for purposes of further investigation or identification parades. The counsel assured the Court that there is no legitimate apprehension or credible basis to believe that the applicants/accused would abscond or flee from the jurisdiction of this Court or otherwise evade the course of justice. Furthermore, the counsel argued that there is no reasonable ground to fear that the applicants/accused would tamper with evidence or intimidate witnesses. The counsel emphasized that the applicants/accused possess deep roots in their communities and are gainfully employed, making the prospect of absconding remote and implausible. Learned advocate relied upon the case laws cited at (2025 SCMR 721) & (2024 SCMR 934).

5. The learned Additional Prosecutor General, Syed Sardar Ali Shah Rizvi, advanced forceful and comprehensive arguments in opposition to the bail application on behalf of the State. The State submitted that the quantity of charas recovered 11,000 grams (11 kilograms) comprising 6,000 grams from Muslim Khan and 5,000 grams from the co-accused represents a

massive and staggering volume that unequivocally situates this case within the most serious category of narcotic offenses. The learned counsel emphasized that such a quantity is not indicative of personal consumption, small-scale dealing, or marginal violation. Rather, it unambiguously demonstrates organized trafficking, large-scale distribution networks, and serious criminal enterprise. The learned counsel contended that the recovery of such an extraordinary and overwhelming quantity creates a presumption of guilty knowledge, criminal intent, and complicity that militates decisively and comprehensively against the grant of bail. The State's counsel categorically submitted that the applicants/accused have entirely failed to substantiate any credible claim of malafide or enmity on the part of the police or prosecution. The counsel argued that the mere furnishing of surety by applicant No.2 in the prior case against Samiullah Pathan does not, in any legitimate sense, establish a motive for false implication of the applicants/accused. The supply and furnishing of surety in a criminal case is an ordinary, lawful, and commonplace act; it does not create an irrebuttable or even persuasive presumption of collusion, conspiracy, or animus. The learned counsel further emphasized that no complaint has been lodged by the applicants/accused against any police official prior to, immediately after, or at any stage subsequent to their arrest. No allegations of illegal beating, torture, extortion, or custodial abuse have been made. The narrative of false implication and vendetta-motivated prosecution, the counsel argued, is wholly speculative, unsupported by material evidence, and devoid of factual foundation in the police file or in the statements recorded during investigation. He further argued that the section 17(2) of SCNS Act will be adjudged at the time of evidence. Section 20 of SCNS Act exclude the application of section 103 Cr.P.C. He lastly prayed that the bail may be dismissed.

6. Having carefully listened to the arguments of both learned counsel, examined the police file, reviewed the relevant statutory provisions and case law, and reflected upon the principles of criminal jurisprudence applicable to narcotics cases, this Court proceeds to articulate its findings and reasoning.

7. Upon consideration of this application and subsequent to a careful re-examination of the legal principles established in the landmark Supreme Court judgments cited by the learned counsel for the applicants/accused i.e. *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934) and *Muhammad Abid Hussain v. The State* (2025 SCMR 721), this Court is constrained to consider with perspective circumspection and intellectual honesty. The Supreme Court in these two watershed decisions has articulated principles of cardinal importance that mandate a fundamental reappraisal of the bail jurisprudence in narcotics cases. These decisions represent a paradigm shift in the manner courts ought to assess and weigh the procedural and evidentiary shortcomings in narcotics investigations against the substantive merits of bail applications.

8. In *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934), the Honorable Supreme Court held with considerable emphasis that the police and members of the Anti-Narcotics Force have conspicuously failed to record or photograph the critical moments of search, seizure, and arrest despite modern technology being readily available. The Supreme Court, invoking Article 164 of the *Qanun-e-Shahadat* Order, 1984, which expressly permits the use of any evidence that may have become available because of modern devices or techniques, directed that in cases involving narcotic substances, the police and investigative agencies must mandatorily record or photograph the proceedings of search, seizure, and arrest. The Supreme Court further observed that whereas Section 25 of the SCNS Act excludes

the applicability of Section 103 Cr.P.C, it has not provided an alternative mechanism of equal procedural safeguard. The failure of the prosecution to utilize modern devices (video recording, photographic evidence) and to associate independent witnesses in thickly populated areas despite the manifest opportunity and facility to do so constitutes a material and substantial procedural lapse that engenders grave and legitimate doubt regarding the authenticity, veracity, and probative worth of the recovery proceedings.

9. In *Muhammad Abid Hussain v. The State* (2025 SCMR 721), the Supreme Court has, with unequivocal force, reiterated and reinforced the principle that procedural fairness and technical evidence are indefensible components of narcotics investigations. The apex Court has emphasized that the absence of video footage and the non-association of independent witnesses seriously compromise, undermine, and weaken the case of the prosecution, necessitating a finding of "further inquiry" and rendering the accused entitled to the concession of bail.

10. Upon careful application of the principles established in these two leading decisions of the Honorable Supreme Court, this Court must acknowledge that the instant case presents compelling grounds that warrant a reconsideration of the bail application under Section 497(2) Cr.P.C on the basis of "further inquiry."

11. The learned counsel for the applicants/accused has placed considerable reliance upon the mandatory requirement contained in Section 17(2) of the SCNS Act, 2024. This provision explicitly requires that recovery proceedings in narcotics cases must be recorded through video documentation. In the present case, admittedly and incontrovertibly, no such video recording exists. This is not a matter of procedural informality or administrative oversight; rather, it represents a flagrant breach of a statutory

mandate that carries explicit legislative sanction and constitutional justification under Article 164 of the Qanun-e-Shahadat Order, 1984. The Supreme Court has articulated with unmistakable clarity that in narcotics cases characterized by the absence of video recording, serious and substantial doubt is cast upon the veracity, authenticity, and probative value of the recovery itself. The reasoning is axiomatic: if the recovery was genuine, transparent, and conducted with legitimate investigative intent, why would the police personnel “who are routinely equipped with mobile devices possessing high-quality cameras” fail to document the momentous events of search, seizure, and arrest? The absence of such documentation becomes, in the absence of satisfactory explanation, an inference of consciousness of investigative irregularity or procedural deviancy.

12. The record manifestly demonstrates that all witnesses to the arrest and recovery proceedings are police officials and subordinates of the complainant. While it is true that Section 25 of the SCNS Act excludes the applicability of Section 103 Cr.P.C, the Supreme Court has made pellucid that this exclusion does not operate as a justification for the police to neglect or deliberately avoid associating independent private witnesses in circumstances where such witnesses are readily and manifestly available. The recovery was allegedly affected at Qazi Wah, located adjacent to the National Highway (NHW), Khairpur” admittedly a location of appreciable public footfall and residential proximity. In such thickly populated circumstances, the failure of the police to identify and associate even a single independent private citizen as mashir constitutes a material deviation from the imperative of procedural rectitude and investigative transparency. The Supreme Court has held that when the prosecution's case rests entirely upon police testimony, uncorroborated by natural and independent witnesses, the

benefit of doubt must be extended to the accused, particularly at the bail stage.

13. The Supreme Court in both *Zahid Sarfaraz Gill and Muhammad Abid Hussain* has articulated with crystalline clarity that procedural lapses of the magnitude demonstrated in the instant case viz, absence of video recording and absence of independent witnesses constitute material grounds warranting a finding of "further inquiry" under Section 497(2) Cr.P.C. The principle enunciated is that when substantial procedural deficiencies permeate the investigation, particularly in cases involving narcotics, the proper forum for detailed and meticulous examination of these procedural deviations is the trial court, not the bail stage. However, the concurrent principle is equally crucial: the presence of such procedural deficiencies creates sufficient doubt regarding the integrity and authenticity of the recovery itself, thereby necessitating that bail be granted to permit fuller trial-stage inquiry and examination. The rationale is that the accused cannot be indefinitely incarcerated pending trial when the prosecution's case is characterized by material procedural deficiencies that require deeper judicial scrutiny and evidentiary appreciation.

14. Whilst it is acknowledged that the quantity of *charas* recovered in the instant case (11 kilograms) is substantially larger than the quantity in *Zahid Sarfaraz Gill* (1,833 grams), this distinction must be examined within the context of the procedural deficiencies rather than in isolation. The Supreme Court's reasoning in *Gill* was not predicated solely upon quantity; rather, the Court's primary concern was the material procedural lapses combined with the opportunity available to the police to rectify these lapses through modern documentation and independent witnessing.

15. The Supreme Court's observation was that even in cases involving lesser quantities, when procedural safeguards are disregarded

despite manifest opportunity to comply, the benefit of doubt should favor the accused. By parity of reasoning and logic, when procedural safeguards are breached in cases involving larger quantities, the necessity for deeper inquiry and examination becomes even more compelling and acute. The presence of a larger quantity does not serve as a justification for procedural deviations; rather, it amplifies the urgency for procedural rigor and investigative transparency. Whilst the earlier order correctly observed that bare allegations of malafide, unsupported by specific evidence, are insufficient to overcome presumptions of regularity, this Court must acknowledge that in the context of the procedural deficiencies articulated above, the allegations of false implication assume a dimension of greater plausibility and credibility. The applicants have contended that applicant No.2 furnished surety in a prior case (Cr. No.36/2025) against Samiullah Pathan, the owner of Lucky Marwat Hotel, and that both applicants-maintained association with the hotel owner. The applicants submit that in consequence of this association, the police, harboring animus and vindictive intent, engineered the instant case as a retaliatory measure. Whilst the furnishing of surety in an earlier case alone does not, in isolation, constitute conclusive evidence of malafide against the police, when combined with the material procedural deficiencies, the absence of video recording, the absence of independent witnesses despite thickly populated circumstances, and the failure to avail modern investigative techniques, these facts collectively engender a tapestry of circumstances that raises serious and substantial doubt regarding the manner and integrity of the recovery proceedings.

16. The Supreme Court has established that when the prosecution's case is characterized by both procedural deviations and surrounding circumstances suggestive of investigative irregularity, the benefit of doubt must be extended to the accused at the bail stage. This is not an acquittal;

rather, it is a recognition that the case requires deeper inquiry and that the accused should not be indefinitely detained pending trial when substantial doubt regarding the integrity of the investigation persists. The Supreme Court has articulated that "further inquiry" refers to a notional and exploratory assessment that may create doubt regarding the involvement of the accused in the crime. The expression "reasonable grounds" obligates the prosecution to unveil sufficient material or evidence to divulge that the accused has committed the offence. However, when the prosecution's case is fraught with procedural deficiencies, investigative lapses, and evidentiary weaknesses, the accused has satisfied the threshold for demonstrating that "sufficient grounds for further inquiry" exist.

17. In the instant case, the procedural deficiencies, absence of video recording mandated by Section 17(2) SCNS Act, absence of independent witnesses in thickly populated circumstances, and complete reliance upon police testimony collectively create sufficient grounds to warrant the finding that the case merits further inquiry at the trial stage. The trial court, upon recording of evidence and examination of witnesses, will be in a position to determine whether the procedural deficiencies are merely technical in character or whether they are indicative of investigative misconduct and evidence fabrication.

18. For the reasons stated above, the Criminal Bail Application No.D-107 of 2025 filed on behalf of Muslim Khan and Barkat Ali is hereby allowed, subject to furnishing the solvent surety in sum of Rs.500,000/- (Five Hundred Thousand Rupees) each, and PR bond in like amount to the satisfaction of trial court. Needless to mention that the above assessments are tentative in nature and shall not affect the merits of trial.

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