

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Justice Muhammad Hashim Khan Kakar
Justice Ishtiaq Ibrahim

17/25

APR
AD

Criminal Petition No. 146/2025

(Against the order/judgment dated 22.01.2025
passed by the Lahore High Court, Multan Bench,
in CrI. Misc. No. 10324-B/2024)

Muhammad Abid Hussain

Petitioner(s)

Versus

The State and another

Respondent(s)

For the Petitioner(s):

Syed Rifaqat Hussain Shah, ASC/AOR

For the State:

Rai Akhtar Hussain, Addl. PG

Date of Hearing:

27.02.2025

JUDGMENT

Muhammad Hashim Khan Kakar, J. The petitioner while invoking the jurisdiction of this Court under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 and has questioned the order dated 22.01.2025 of the Lahore High Court, Lahore whereby his application for bail after arrest in FIR No.1508/24 dated 09.12.2024 for the offence under section 9(1)(c) of the Control of Narcotic Substances Act, 1997 ("Act of 1997") registered at Police Station Chowk Azam, Layyah was dismissed.

2. Precisely the facts necessary for the disposal of the instant bail petition are that allegedly, on 09.12.2024, at 04:49 p.m, upon receipt of spy information, the petitioner was apprehended by the police party when he was present at Chak No. 353/TDA and the complainant recovered "Heroin" weighing 1100 grams, which the petitioner kept in his possession for the purpose of sale; hence this case.

3. Syed Rifaqat Hussain Shah, learned counsel for the petitioner, contended that the petitioner is innocent and has falsely been implicated

in the case by the police authorities on the basis of fake and fictitious story; that the petitioner is behind the bars since his arrest; investigation has been completed and corpus of the petitioner is no more required to the police for further investigation; that no private witness was associated by the local police at the time of alleged recovery which is clear violation of section 103 Cr.P.C; the raiding party failed to record the recovery process on video despite clear and repeated directions from this Court to do so; and, the petitioner is previously a non-convict, therefore, he may be granted post arrest bail.

4. On the other hand, Mr. Rai Akhter Hussain, Additional Prosecutor General, appearing on behalf of the State opposed this petition with the arguments that the petitioner is nominated in the FIR; that the petitioner was caught red-handed at the spot and the recovery of "Heroin" has been effected from his possession, therefore, there is no ground for grant of post arrest bail in favour of the petitioner.

5. At the very outset, it would be relevant to state that the Act of 1997 prescribes severe punishments for the possession and sale of narcotic substances. 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 petitioner was in possession of narcotic substance and that it was intended for sale. Article 164 of Qanun-e-Shahadat Order, 1984 emphasizes the importance of modern devices and techniques in the collection of evidence. It provides that evidence obtained through modern devices, such as video recordings, should be given due weight in judicial proceedings. This provision underscores the need for law enforcing agencies to adopt contemporary methods to ensure the accuracy and reliability of evidence. In this regard, in a criminal case titled *Zahid Sarfaraz Gill v State* (2024 SCMR-934), this Court had granted bail after arrest to an accused carrying 1833 grams of *charas* which, as per the table in section 9(1) of the Act of 1997, comes under clause (c) of its third category and prescribes a minimum imprisonment of nine years and a maximum of fourteen years and fine, on the ground that why the police and members of the Anti-Narcotics Force do not record or take

photographs when search, seizure and/or arrest is made. Article 164 of the Order, 1984 specially permits the use of any evidence that may have become available because of modern devices or techniques, and its Article 165 overrides all other laws. This Court had sent the copy of the order *ibid* to the Secretary, Ministry of Narcotics Control, Government of Pakistan, Director General Anti-Narcotics Force, the Secretaries of the Home Departments of all Provinces, Inspector Generals of Police of all the provinces and of the Islamabad Capital Territory to consider whether they want to amend the ANF/Police rules to ensure making video recordings/taking photographs whenever possible with regard to capturing, preserving and using such evidence at trial.

6. In the present case neither any video in the shape of recording and photographs of the alleged recovery has been collected by the police nor any private witness from the locality was associated to prove the alleged recovery from the possession of the petitioner. As stated above, 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 the cases of stringent punishments, the prosecution must present clear, cogent and reliable evidence to prove the accused's guilt beyond a reasonable doubt. In the absence of video evidence and independent witnesses, the prosecution's case relies heavily on the testimony of the police officers involved in the raid, which is insufficient to meet the required standard of proof.

7. We strongly recognize the need to combat the menace of narcotics, however, it must also be ensured that the rights of the accused are protected. The failure to record the recovery on video, non-association of private witnesses and failure to adhere clear judicial directives, tilts the balance in favour of the petitioner.

8. It is also a golden principle of administration of criminal justice that ultimate conviction and incarceration of a guilty person can repair the wrong caused by a 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. In this regard reference can be made to the case of *Manzoor v State* (PLD 1972 SC 81).

9. For the foregoing reasons, whilst setting aside the impugned order, this petition is converted into an appeal and allowed. The petitioner is admitted to post arrest bail subject to his furnishing bail bonds in the sum of Rs.200,000/- (Rupees two hundred thousand only) with two sureties in the like amount to the satisfaction of the Trial Court. Needless to mention that any observations made in this order are tentative in nature and shall not influence the Trial.

Sd/-----J

Sd/-----J

ISLAMABAD
27.02.2025
(Farrukh)

Approved for Reporting