

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Constitution Petition No.D-1074 of 2025

Before:

Mr. Justice Yousuf Ali Sayeed;

Mr. Justice Abdul Hamid Bhurgri.

Petitioner : Waleed son of Fareed Khokhar,
through Ms. Fardia Naz Abbasi, Advocate.

Respondents : The State and another,
through Mr. Siraj Ahmed Bijarani,
Assistant Prosecutor General Sindh.
Mr. Muhammad Ismail Bhutto, Additional
Advocate General Sindh,

Date of Hearing: 28.07.2025.

Date of Order. 28.07.2025.

ORDER

Abdul Hamid Bhurgri, J.- This is a Constitution Petition filed under Article 199 of the Constitution by the petitioner praying for post arrest bail in view of the embargo contained in Section 35(1) of the Sindh Control of Narcotic Substances Act, 2024. Reference is made to the judgment dated 22.04.2025, passed by a three-member bench of this Court in Constitutional Petition No. D-937 of 2025. The petitioner is accused in FIR No. 27 of 2025, lodged at Police Station GOR, District Hyderabad.

2. The FIR outlines the prosecution's case to the effect that, on 11.04.2025 at 1500 hours, vide Entry No. 15, the complainant, accompanied by his subordinates, departed the police station for routine patrolling and checking. Upon reaching Baban Shah Colony, the complainant allegedly received a tip-off regarding two individuals carrying black plastic shoppers near the railway track adjacent to Jamali Mohalla, purportedly selling contraband substance (Ice). Acting upon this information, the police rushed to the designated location and, at approximately 1630 hours, observed two persons matching the description. Upon noticing the police party, the suspects attempted to flee; one was apprehended with the shopper, while the other escaped after discarding his shopper. The apprehended individual disclosed his name as Abdul Ghafoor Tunio. A search of his person led to the

recovery of currency notes in the denominations of Rs.1000 and Rs.500. The black shopper in his possession was found to contain Ice, weighing 170 grams. He further identified the absconding co-accused as Waleed. The discarded shopper attributed to Waleed was recovered and also found to contain Ice, weighing 110 grams. The property was sealed separately, and after preparation of the necessary documentation, the accused and the recovered material were brought to the police station, where the instant FIR was registered.

3. Learned counsel appearing for the petitioner submitted that the FIR is false and lodged with malafide intent. It was argued that neither was the petitioner apprehended at the spot nor was any contraband recovered from his possession. The property allegedly recovered has been foisted upon the petitioner owing to his refusal to pay a bribe to the police. It was further submitted that no independent witness was cited, despite the incident having allegedly taken place in a densely populated locality. The petitioner, it was stated, belongs to a respectable family, has no criminal history, and thus seeks post-arrest bail.

4. Conversely, the learned Assistant Prosecutor General opposed the petition, contending that the petitioner is specifically named in the FIR and stands accused of being involved in the recovery of narcotic substance. He therefore prayed for dismissal of the petition.

5. We have heard the learned counsel for the petitioner as well as the learned Assistant Prosecutor General, Sindh, and have thoroughly examined the material available on the record.

6. Admittedly, the petitioner was not arrested at the scene, yet is shown in the FIR to have absconded after discarding the black shopper, which allegedly contained Ice weighing 110 grams. The prescribed punishment for such an offence does not exceed five years, as such, the alleged recovery does not fall within the ambit of a "prohibited degree" offence, thereby rendering bail the norm and incarceration the exception.

Furthermore, the petitioner was arrested on the following day, i.e., 12.04.2025, and nothing was recovered from his person at the time of arrest.

7. Moreover, the alleged recovery is said to have occurred in a densely populated area; nevertheless, the police failed to associate any neutral or independent witness at the time of the alleged recovery. It is a well-settled principle of criminal law that where the prosecution's case rests solely on official testimony and is devoid of corroboration from impartial and independent sources, the benefit of the doubt must necessarily go to the accused. In this regard, reliance is placed on the judgment reported as ***Muhammad Arshad v. The State (2022 SCMR 1555)***. Additionally, the petitioner is a woman of prior good character and cannot be categorized as a habitual offender.

8. Prima facie, the case against the petitioner warrants further inquiry. While official witnesses may be treated as having equal evidentiary standing with private witnesses, their testimony must nonetheless be tested for credibility at the time of trial.

9. In light of the foregoing circumstances, the instant petition was allowed vide short order dated 28.07.2025, and the petitioner/accused was admitted to post-arrest bail, subject to furnishing solvent surety in the sum of Rs. 50,000/- along with an equivalent P.R. bond to the satisfaction of the learned trial Court.

10. It is clarified that the observations recorded hereinabove are merely tentative and shall not prejudice the learned trial Court in adjudicating the case on its merits. The petitioner shall ensure his punctual attendance on each and every date of hearing, failing which the trial Court shall be at liberty to recall the concession of bail.

Judge

Judge