

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 1004 of 2025.

Applicant : Javaid son of Mehmood
Through Mr. Khadim Hussain, Advocate

Respondent : The State
through Mr. Rubina Qadir, DPG Sindh

Date of hearing : 07.05.2025

Date of order : 13.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – The applicant, Javaid, seeks post-arrest bail in a case bearing crime No. 214 of 2025 registered at Police Station Darakshan, Karachi, in respect of an alleged offence falling under Section 9(c) read with Section 9(i)(3) of the Control of Narcotic Substances Act, 1997 (“CNS Act 1997”), as amended by the Act of 2022. It is pertinent to note that the applicant’s earlier plea for bail was declined by the learned Additional Sessions Judge-VI, Karachi South, vide order dated 07.04.2025.

2. The bail application presently before this Court arises in a peculiar factual and legal context. The applicant stands implicated in a case wherein the FIR was registered under a statutory provision that, as per the official record, stood repealed prior to the date of registration. The continuation of proceedings pursuant to such a foundational illegality, compounded by procedural irregularities in the investigation and prosecution process, has raised grave concerns as to the legality of the applicant’s detention.

3. During the hearing of the bail application, the learned Deputy Prosecutor General raised a preliminary objection to the maintainability of this application on the ground that Section 35(1) of the Sindh Narcotic Substances Act, 2024 expressly ousts the jurisdiction of all trial courts and criminal forums to entertain bail pleas under Sections 496 and 497 of the Code of Criminal Procedure, 1898. The learned DPG contended that the statutory bar was absolute and that the application could not be entertained by this Court.

4. However, this objection has been rendered devoid of legal force in view of the binding judgment of the Larger Bench of this Court in Constitution Petition No. D-937 of 2025, dated 22.04.2025. The Larger Bench has conclusively held that while Section 35(1) of the Act 2024 ousts the jurisdiction of the ordinary criminal courts to entertain bail petitions under the Cr.P.C., it does not and cannot curtail the constitutional jurisdiction of the High Court under Article 199(1)(c) of the Constitution for the enforcement of fundamental rights. Relying on paragraph 197 of PLD 2001 SC 607 (Khan Asfandiyar Wali's case), the Court reaffirmed that ouster clauses in special laws cannot abridge constitutional protections, particularly where the question of personal liberty arises under Articles 9, 10, 10-A, and 14 of the Constitution. More significantly, the Larger Bench clarified that petitions seeking bail in such circumstances are not in the nature of routine bail applications under the Cr.P.C., but are in essence constitutional petitions invoking fundamental rights, and as such, can only be entertained by a Constitutional Bench duly constituted in accordance with Article 202A(3) of the Constitution. Given the above legal position, this Court is precluded from proceeding further in the instant bail application, as it is not seized of constitutional jurisdiction in the present composition. The applicant, if so advised, may file an appropriate petition invoking Article 199(1)(c) before a Constitutional Bench competent to consider enforcement of fundamental rights in the context of bail. Accordingly, and in view of the statutory bar under Section 35(1) of the Act 2024, coupled with the authoritative pronouncement of the Larger Bench, the instant bail application is disposed of as not maintainable before this Bench. The applicant is at liberty to approach this Court by invoking its constitutional jurisdiction through a proper petition seeking enforcement of fundamental rights.

5. Before parting with this order, it is imperative to underscore that with the promulgation of the Act of 2024, the CNS Act, 1997 has been formally repealed within the territorial limits of the Province of Sindh. This repeal, effected through Section 45(1) of the Act of 2024, operates prospectively, displacing the legal efficacy of the CNS Act 1997 for any offence allegedly committed after the enforcement of the new law. Consequently, all prosecutorial, investigative, and judicial actions in relation to such offences must conform exclusively to the legal framework

of the Act of 2024. Although Section 45(2) of the Act of 2024 contains a saving clause, it is narrow in scope and applies only to: rights, liabilities, or obligations accrued; penalties incurred; or proceedings commenced under the repealed law prior to the repeal. This clause does not authorize the registration of fresh FIRs or initiation of new prosecutions under the CNSA 1997 for offences committed after its repeal. The continued invocation of the repealed statute for new prosecutions is therefore both legally erroneous and jurisdictionally void. Nevertheless, this Court has observed that FIRs continue to be registered under the repealed CNS Act 1997, and police reports under Section 173 Cr.P.C. are routinely being submitted and entertained by Special Courts constituted under the repealed law. Such courts are, in turn, assuming jurisdiction, entertaining bail applications, and proceeding to trial under a legal regime that is no longer operative in the Province of Sindh. This practice is not only contrary to the express provisions of the Act of 2024 but is also repugnant to well-established legal principles. It is a fundamental precept of law that jurisdiction must flow from statute and cannot be assumed by implication, conduct, or administrative convenience. As held in *Federation of Pakistan v. Aitzaz Ahsan* (PLD 1989 SC 61), all judicial and executive acts must be founded in valid and subsisting law. The submission of a police challan under a repealed statute cannot confer jurisdiction upon a court to adjudicate matters falling outside the purview of the prevailing law. More critically, the prosecution of individuals under a repealed statutory framework for post-repeal conduct violates the constitutional guarantee of due process and fair trial under Article 10-A. The accused is deprived of protections available under the new law, including differences in penalty, classification of offences, and procedural safeguards, thereby rendering the entire proceeding vulnerable to constitutional challenge. Such action also offends the core principle of criminal jurisprudence that no person shall be tried for an offence except under a law in force at the time of its commission. It bears reiteration that Article 5(2) of the Constitution imposes a binding duty on every organ of the State, including law enforcement agencies, prosecutors, and the judiciary, to obey and give effect to the Constitution and the law. The judiciary, in particular, bears the duty to ensure that its jurisdiction is exercised within the contours of the law. As famously affirmed in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), "It is emphatically the province and duty of the judicial

department to say what the law is.” Accordingly, all courts, including Special Courts previously constituted under the CNS Act, 1997, are unequivocally restrained from assuming jurisdiction in relation to offences committed after the enforcement of the Act of 2024 where proceedings have been initiated under the repealed law. Such matters must be investigated, prosecuted, and tried solely under the Act of 2024, in accordance with the procedures and limitations prescribed therein. In furtherance of judicial coherence and institutional compliance, the learned MIT-II is directed to circulate a copy of this order to all subordinate courts and Special Courts previously exercising jurisdiction under the repealed CNS Act, 1997, for their information, guidance, and strict adherence to the governing statutory framework. The Office is further directed to ensure expeditious compliance through appropriate administrative channels. Copy of this order also be sent to the IG, Sindh Police for its circulation to all SSPs of Districts of Sindh for strict compliance.

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