IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

C.P No. D-625 of 2025
[Hafeezullah Lashari v. Province of Sindh & Others]

Before:
Mr. Justice Muhammad Saleem Jessar
Mr. Justice Riazat Ali Sahar

Hafeezullah Lashari, the Petiotner:	Through Mr. Abdul Rehman A. Bhutto, Advocate.
P.O. Sindh:	Through Mr. Liaquat Ali Shar, Additional A.G.
The State:	Through Mr. Ali Anwar Kandhro, Additional P.G a/w SIP Raza Muhammad, SHO/I.O, P.S, Kareem Bux and ASI Ghulam Sarwar Buriro.

Dates of Hearing:	**10.07.2025 & 11.07.2025**.
Date of Short order:	**11.07.2025**.
Date of Reasons:	**16.07.2025**

O R D E R

RIAZAT ALI SAHAR, J: - Personal liberty, a cornerstone of international human rights law and a fundamental attribute of human dignity, is enshrined as an inviolable constitutional guarantee under the Constitution of the Islamic Republic of Pakistan, 1973. Anchored in universally recognized legal norms, this right is fortified by interrelated constitutional provisions: Article 9 affirms that *"No person shall be deprived of life or liberty save in accordance with law"*, thereby recognizing liberty not as a discretionary privilege but as a fundamental entitlement, revocable only through due process that is fair, just, and reasonable. Complementing this, Article 4 imposes a positive obligation upon the State to ensure that *"every citizen shall enjoy the protection of law"*, mandating the preservation of individual freedom against arbitrary or unlawful state action. It is within this

normative framework of constitutional and international safeguards that the present petition is situated, arising from an alleged grave violation of the petitioner's fundamental rights. The petitioner was allegedly apprehended by officials of Police Station Kareem Bux, District Jacobabad, on 24-05-2025. In response, his mother, Mst. Sabo Lashari, filed Habeas Corpus Petition No. 78 of 2025 before the Sessions Judge, Jacobabad. The matter was referred to the Additional Sessions Judge, Thull (Annexure B-2, page-31 of Court file), who ordered an unannounced inspection to verify the detention. The designated Raid Commissioner, the Civil Judge and Judicial Magistrate-II, Jacobabad, inspected both Police Post Chook Lashari and Police Station C-Section (now A-Section), Thull, but the petitioner was not found in custody. The S.H.O. also submitted a report confirming the detainee's absence, leading to the disposal of the petition on 30-05-2025. Subsequently, an FIR was registered against the petitioner under Crime No.11 of 2025, invoking Sections 9(i) and 3(c) of the Sindh Control of Narcotic Substances Act, 2024. Dissatisfied with the proceedings, the petitioner's mother lodged a complaint with the S.S.P. Jacobabad and filed another Habeas Corpus Petition No. 84 of 2025 on 05-06-2025 (Annexure-E/1, page-43 of the Court file), prompting a further raid and a report that confirmed the petitioner's arrest in connection with the alleged recovery of 1,950 grams of charas.

2. It is further stated that the detainee was produced before the Court of Sessions, Jacobabad, on 31-05-2025 for physical remand; however, the Sessions Judge declined jurisdiction, citing the absence of notified Tribunals under the Sindh Control of Narcotic Substances Act, 2024. The Raid Commissioner's report, confirming the petitioner's custody in the narcotics case, resulted in the disposal of the second habeas corpus petition on 10-06-2025 with a direction for the police to proceed in accordance with law. Thus, the petitioner prayed as under:

a) To declare that petitioner is detained with Police in improper without any judicial order from 30.05.2025 till to date which is illegal, null and void

b) To declare that the petitioner is without any remand/ trial / challan is illegal, hence he is liable to be released on P.R Bond or Special Order passed by Hon'ble Court under section 63 Cr.P.C.

c) *To declare that the petitioner is entitled for grant of bail as a juvenile aged about 15/16 years as shown in School Certificate.*

d) *To award cost of the petition to the Petitioner.*

e) *To grant any other relief deemed just and proper by this Honourable Court in the circumstances of this case.*

3. Learned counsel for the petitioner vehemently contends that the petitioner, a minor aged about 15/16 years, is innocent and has been falsely implicated in instant case solely due to the refusal of his parents to meet the unlawful demands of the police officials. It is submitted that on 24-05-2025, the petitioner was abducted by the then S.H.O. of Police Station C-Section (now A-Section), Mashooque Ali Jakhrani, along with two other police personnel, and was kept in illegal confinement at different police posts. The petitioner's mother, upon learning of his unlawful detention, approached Sessions Judge, Jacobabad, by filing applications under Section 491 Cr.P.C., bearing Habeas Corpus Petition Nos.78 and 84 of 2025, which were disposed of without any judicial remand being granted. Learned counsel argues that the petitioner was subsequently shown arrested under Sections 9(i) and 3(c) of the Sindh Control of Narcotic Substances Act, 2024, with a concocted recovery of 1,950 grams of charas and Rs. 300, while the police conveniently failed to specify from which pocket alleged currency notes were recovered. Moreover, no independent mashirs were cited during alleged recovery, despite the place of occurrence being a busy area, which constitutes a clear violation of Section 103 Cr.P.C. It is further argued that the FIR is a fabrication aimed at coercing the petitioner's family into paying unlawful gratification, as the police had earlier demanded Rs. 200,000 and later Rs. 100,000 for his release. Learned counsel points out that the prosecution witnesses are all subordinates of the complainant, making them inherently biased and interested in securing a conviction. The petitioner's continued detention is entirely without lawful authority, as no written order of remand has been passed by any competent court, and the S.H.O. has merely kept him on so-called "*rahdari remand*". Emphasizing the petitioner's youth, clean antecedents, and the absence of any reasonable grounds connecting him with alleged offence, learned counsel submits that the petitioner is entitled to be

released on bail or personal recognizance bond under Section 63 Cr.P.C., particularly as the prosecution has failed to establish even a prima facie case against him.

4. Pursuant to the issuance of notices to respondents through this Court's order dated 03.07.2025, the matter was taken up for hearing on 10.07.2025. On said date, the respondents, who are police officials, appeared and submitted that they had presented the petitioner before the competent Judicial Magistrate seeking remand. However, Judicial Magistrate declined to entertain the remand application on the premise that instant FIR had been registered under the provisions of the Sindh Control of Narcotic Substances Act, 2024, which, as per law, falls within exclusive jurisdiction of the Special Tribunal. **Consequently, the respondents, in order to adhere to the procedural requirements, produced the petitioner before the District and Sessions Judge, Jacobabad. Nevertheless, the District and Sessions Judge also refused to entertain the remand on similar grounds as those taken by the Judicial Magistrate.**

5. In view of stance taken by the respondents and apparent ambiguity regarding exercise of jurisdiction, this Court, upon hearing the submissions, deemed it appropriate to call for a detailed report from both Judicial officers i.e. District and Sessions Judge, Jacobabad, and concerned Judicial Magistrate, requiring them to explain as to why the remand was not entertained and why they refrained from exercising their powers as envisaged under Sections 61 and 63 of the Code of Criminal Procedure, 1898, in the interregnum.

6. Subsequently, upon consideration of the matter and in the interest of justice, this Court, vide short order dated 11.07.2025, granted bail to the petitioner.

7. The District and Sessions Judge, Jacobabad, submitted that "during the summer vacation from 07-07-2025 to 21.07.2025, the orders dated 10-07-2025 and 11-07-2025 had been communicated, though no evasive reply was furnished by him as alleged, and a copy of the petition was not received". It was clarified that HCP No.

78/2025 filed by Mst. Sabo Lashari had been disposed of on 30-05-2025 after a raid confirmed that her son, Hafeezullah Lashari (a minor boy), was not in illegal custody. A second HCP No. 84/2025 confirmed his arrest in Crime No. 11/2025 involving 1,950 grams of charas under the Sindh Control of Narcotic Substances Act, 2024, and as his detention was lawful, the Habeas Corpus Petition was disposed of on 05-06-2025. The SHO claimed his remand application under Section 167 Cr.P.C. had been verbally refused, leaving the accused on "*rahdari*", but no written order existed for revisional jurisdiction under Section 435 Cr.P.C. It was further stated that all Sessions Courts had been refrained from entertaining narcotics matters due to the Sindh High Court's directives (CP No. D-937/2025 and Cr. B.A. No. 1004/2025), and the actions were in strict compliance with the superior courts' orders.

8. The Civil Judge and Judicial Magistrate-II, Jacobabad in compliance with directives of the Court, submitted detailed comments regarding the proceedings of HCP No. 78/2025 and HCP No. 84/2025 (supra). It was clarified that there was no prior knowledge of HCP No. 78/2025, alleged raid, or the registration of FIR No.11/2025 under the Sindh Control of Narcotic Substance Act, 2024, as no such remand application or FIR was presented before the Consumer Protection Court/J.M., Jacobabad. A raid was conducted on 05.06.2025 at PS Kareem Bux under the orders of the I/C Sessions Judge, during which the detainee was found confined in connection with FIR No. 11/2025 for recovery of 1950 grams of charas. The SHO's claim that remand was sought and refused by the Magistrate has categorically denied as false and baseless. Subsequent proceedings and orders of the Sessions Court, Jacobabad, were not communicated until later, when the police's misstatements came to light and were promptly refuted. The arguments of the petitioner's counsel, allegedly favouring the police, was also rejected as speculative and without substance. While acknowledging the Court's observations regarding legal obligations under Section 63 Cr.P.C., it was reiterated that no remand application was received; the detainee was shown arrested in a substantive

offence and was directed to be produced before the Sessions Court on 10.06.2025.

9. In the interim, the respondents submitted the requisite police papers for the Court's consideration.

10. **We have heard** learned counsel for the Petitioner and the learned Deputy Prosecutor General, and have given our anxious consideration to their submissions. We have also meticulously examined the material made available before us on the record.

11. The promulgation of the Sindh Control of Narcotic Substances Act, 2024 **("SCNS Act 2024"),** which repealed the federal Control of Narcotic Substances Act, 1997 in Sindh, has unfortunately engendered significant confusion in the administration of justice. Notably, the SCNS Act 2024 **omits any provision for bail or clear mechanism for remand**, leaving a legislative void that has perplexed courts and law enforcement alike. In the petitioner's case, this void manifested in a troubling manner: **the Judicial Magistrate and the Sessions Judge each declined to entertain the remand of the accused, citing want of jurisdiction under the new law**. As a result, the police kept the petitioner in custody on a so-called "*rahdari"* (transit) remand for two days without any written remand order from a competent court. Such a scenario has adversely impacted the fundamental rights of citizens, exposing them to protracted detention with no forum readily available for relief, and has put law enforcement in the untenable position of holding accused persons without judicial sanction. This state of affairs patently offends Article 9 of the Constitution (no person shall be deprived of liberty save in accordance with law) and Article 10 (safeguards as to arrest and detention, including production before a magistrate within 24 hours), as well as the right to due process and fair trial guaranteed by Article 10-A. The judiciary cannot permit this confusion to persist, as it strikes at the very heart of the rule of law and fundamental liberties.

12. It is instructive to contrast the provincial SCNS Act, 2024 with the federal Control of Narcotic Substances Act, 1997 ("CNS Act 1997"), which it replaced in Sindh. The **CNS Act 1997** (as amended Act, 2022) provided a comprehensive framework for narcotics offenses, including detailed provisions on **special courts, bail, and procedure**. Under the federal law, *Special Courts* were to be established by the government (Sections 45 and 46), and jurisdiction of ordinary courts was accordingly adjusted. Crucially, the CNS Act 1997 (as amended Act, 2022) contained Section 51, which restricted bail in narcotics cases – particularly for larger quantities – but did not *entirely* oust the concept of bail. For example, an offense under Section 9(c) of the federal Act (possession/trafficking above a certain threshold, e.g. Ten Kilogram of narcotics) carried severe punishments (up to life imprisonment) and was treated as non-bailable in ordinary courts, yet even then the law permitted bail in rare circumstances through the Special Court or High Court if warranted. In essence, the federal scheme balanced the **gravity of narcotics offenses** with the accused's rights by tailoring bail provisions to the severity of the charge (e.g. smaller quantities under Section 9(a) or 9(b) were relatively less stringently treated, and the punishments provided were lesser). By stark contrast, the **SCNS Act 2024** deleted the application of Sections 496–497 of the Cr.P.C. altogether for *all* offenses under the Act. Section 35 of the Sindh Act explicitly states that *no bail* shall be granted for offenses under it, thus rendering every offense non-bailable regardless of quantity or circumstances. This blanket prohibition on bail is **unprecedented**, as even under the federal law some discretion existed for lesser offenses. Moreover, while the SCNS Act 2024 largely copied the CNS Act 1997's definitions and penalties, it failed to incorporate any substitute procedure for **remand** or interim custody. The new provincial law's silence on who may authorize detention beyond 24 hours left a **procedural chasm** – one that directly implicates constitutional principles. Article 10 of the Constitution requires that an arrested person be produced before a magistrate within 24 hours, and Article 9 forbids unlawful detention; yet the SCNS Act 2024, by not naming any court for initial remand, created a scenario where these guarantees could be easily breached.

Likewise, the absolute bar on bail, without exception or oversight, raises serious concerns under Article 10-A (the right to a fair trial), as it deprives accused persons of a fundamental procedural protection. Article 14 of the Constitution, protecting the dignity of man, is also at stake when individuals are subjected to indignity and hardship of jail with no legal avenue to seek release. In short, the SCNS Act 2024's gaps – particularly the **lack of bail and remand provisions** – are in tension with the fair trial and liberty guarantees that form the cornerstone of our Constitution.

13. When the legislature fails to provide clear procedures, especially those affecting liberty, the **superior judiciary must step into the breach** to uphold fundamental rights. This Court cannot allow an accused to remain in legal limbo due to a statutory omission. As a first step, it falls upon the High Court to **interpret the law in a manner that averts chaos** and safeguards rights. The SCNS Act 2024 itself, in creating special courts, anticipated a transition: Section 29 read with Section 30 provides for the establishment of Special Courts with exclusive jurisdiction to try offenses under the Act. The provincial government is empowered to set up as many Special Courts as necessary and appoint Special Judges. Importantly, the law recognizes the interim period; it contains a proviso that *"until the Special Courts are established under this section, the existing competent court (Court of District & Sessions Judge) as provided by section 2(qq) of the SCNS Act, 2024, shall continue to perform its functions for the speedy disposal of narcotics cases."*, which is reduced as under:

> "2 Definition (qq) "**competent court**" means existing Court of District & Sessions Judge that has the legal authority to hear and decide a case under this Act;"

In other words, **the law never intended a jurisdictional vacuum** – it designates the regular courts as "competent courts" to act in the meantime. The term *"competent court"* is defined in Section 2(qq) read with Sections 29 & 30(2)(ii) of SCNS Act, 2024 as essentially the courts already exercising jurisdiction over such offenses. Sections 29 & 30 of SCNS Act,2024 are reproduced as under:

> "**29. Jurisdiction to try offences.** - The Special Court established under this Act shall have the exclusive jurisdiction to try an offence cognizable under this Act.
>
> **30. Establishment of special court**. – (1) Government shall, by notification in the official Gazette, establish as many Special Courts as it considers necessary and appoint a Judge for each of such Courts and where it establishes more than one Special Courts or competent court, it shall specify in the notification the place of sitting of each Special Courts and the territorial limits within which it shall exercise jurisdiction under this Act.
>
> (2) There shall be Special Courts to try offences under this Act, namely:-
>
> (i) Special Courts having the power to try all offences; and
> (ii) Competent courts having the power to try offences.

Therefore, the Courts of District & Sessions Judges in Sindh, being the courts of original criminal jurisdiction in serious offenses, are by law the *competent courts* to deal with narcotics cases until special courts are in place. Regrettably, in practice these courts were uncertain or hesitant – partly due to administrative directives and misgivings after the new law – and thus declined jurisdiction. Such hesitation, though perhaps borne of caution, **cannot override the clear proviso of the statute**. It is incumbent on the judiciary to dispel this confusion: *until Special Courts under the SCNS Act 2024 are notified and functional, the jurisdiction to entertain and try all cases under the Act lies with the ordinary courts (Courts of District & Sessions Judges), save for the matter of bail until law provides such remedy*. Indeed, in present petition, this Court had to intervene by calling reports from the Sessions Judge and Magistrate to clarify their authority. We reiterate that **no accused can be left un-produced or un-remanded** on the ground that "no Special Tribunal exists." The magistracy and Sessions courts must exercise their inherent powers under the Code of Criminal Procedure (as "competent courts") to take cognizance, grant remands, and process challans under the SCNS Act, or else the constitutional protections of Articles 9 and 10 would be rendered nugatory. The superior judiciary's role is also to *urge the executive* to expedite filling this void: it has not escaped this Court's notice that

despite the law's enactment in early 2024, the Government of Sindh has yet to establish the Special Courts and appoint Judges. Such inaction is unconscionable and was expressly frowned upon in **CP No. D-937 of 2025** (discussed below). We echo that concern and stress that the **constitutional courts stand as the vanguard** to ensure that legislative inaction or ambiguity does not translate into injustice on the ground.

14. In the unique circumstances created by the SCNS Act 2024, the question arose: *who can grant bail*, if at all? The answer, as crystallized in recent judicial precedents, is that **only the High Court in its constitutional jurisdiction can currently entertain bail pleas under the SCNS Act**. **CP No. D-725 of 2025 (*Peer Bux v. The State)*** is illustrative. In that case – involving a young actor charged with a small quantity of narcotics – a Division Bench of this Court (Circuit Court Hyderabad) invoked its extraordinary jurisdiction under Article 199 of the Constitution to grant bail, precisely because the special trial courts had not been established and the statute provided no other forum. The Bench observed that it would be a **travesty to keep the accused incarcerated for an indefinite period simply due to Government's failure to operationalize the law**. It was noted that Section 35 of the SCNS Act, 2024 had effectively **disabled the trial courts from granting bail**, by removing applicability of Sections 496–497 Cr.P.C. (the usual provisions empowering Sessions Courts to grant bail in bailable and non-bailable offenses). In absence of special courts and with the Sessions Judge's hands tied by Section 35, the High Court's constitutional bench stepped in as the only viable avenue. The Peer Bux case (supra) thus set the precedent that *constitutional petitions for bail* are maintainable and that relief can be granted by the High Court to prevent violations of fundamental rights. Consistently, in **Criminal Bail Application No. 1004 of 2025**, this Court (in its regular criminal jurisdiction) opined that, given the bar of Section 35 of the Sindh Act, the proper course for an accused seeking bail is to file a writ petition under Article 199 before a Division Bench. In fact, it was explicitly argued by the State in that case that the *"only*

remedy" available to an accused under the SCNS Act is to approach the High Court's constitutional jurisdiction. The Additional Sessions Judge hearing Cr. B.A. 1004/2025 accordingly **dismissed the post-arrest bail application for want of jurisdiction**, observing that the trial court could not entertain it in view of Section 35 and the overriding effect of the Sindh Act. He referred the matter to the High Court, reinforcing the understanding that *bail under the Sindh narcotics law lies outside the competence of any court inferior to the High Court*. As a result of these developments, all Sessions Judges in Sindh have (rightly) ceased entertaining bail pleas in the cases of SCNS Act, 2024, as noted in the Sessions Judge's report in present matter. We affirm that position: **until the law is amended or the Special Courts come into existence**, petitions under Article 199 of the Constitution before the High Court are the *only appropriate procedure to seek bail* for offenses under the SCNS Act, 2024 under the guidance provided by **Khan Asfandyar Wali** case reported in **PLD 2001 SC 607**. This unusual arrangement, compelled by necessity, is aimed at preventing the denial of liberty without recourse. It is not a sustainable permanent solution – indeed, it burdens the High Court and was never the legislature's intent – but it shall continue *pro tempore* to ensure that accused persons are not left remediless.

15. It is pertinent to recall the recent admonition by the **Hon'ble Supreme Court of Pakistan** regarding compliance with judicial orders, which by analogy applies to the issue of remand in our case. In ***Civil Petitions No. 2915-L, 2916-L & 2917-L of 2015*** **(decided in 2025)**, the Supreme Court addressed a scenario where a lower functionary had delayed implementing the High Court's remand orders in a land matter. The apex Court expressed its disapproval in unequivocal terms, observing that there is a **"disturbing practice"** of treating remand directions as optional or capable of indefinite postponement. The Court clarified that *a remand is not an invitation for delay* – when a superior court issues directions on remand, **they are to be complied with faithfully and expeditiously**. Crucially, the Supreme Court underscored that the

mere filing of an appeal or petition does **not operate as a stay** of the order impugned; unless a competent court explicitly grants a stay, all orders (including remand orders) must be given effect in the ordinary course. Relying on Order XX, Rule 1 of the Supreme Court Rules, 1980, and its earlier judgment in *Rashid Baig v. Muhammad Mansha (2024 SCMR 1385)*, the Court re-affirmed that **administrative inaction on the pretext of "pendency" is impermissible**. It went on to lament that despite clear pronouncements, the practice of disregarding binding remand orders had continued, amounting to a systemic failure that needed urgent redress. The lesson from the Supreme Court's ruling is clear: *all authorities are constitutionally bound to act in aid of the court under Article 190*, and thus any police officer, jail official or administrative judge who fails to produce an accused or delays compliance with a judicial order violates this duty. Translating that principle to present context, the police and magistracy in Sindh must ensure scrupulous compliance with the Code of Criminal Procedure, 1898 and any orders of the court regarding custody. There can be no excuse – such as the "absence of special court" or pendency of some reference – to hold an accused incommunicado or without proper remand. If a Magistrate verbally refuses remand (as was claimed here), the police cannot infer authorization to detain the accused extra-legally; they must immediately seek an order from the next competent forum (e.g. Sessions Judge or High Court). Any **administrative or executive hesitation to promptly obey court directives** (for example, orders to produce the detainee or to decide a remand) would run afoul of the Supreme Court's guidance and could attract proceedings for contempt. In sum, the *continuity and authority of judicial orders* – especially those affecting personal liberty – must be maintained. This Court aligns itself with the apex Court's emphasis: **remand and production orders are to be treated as sacrosanct, not suggestions.** The present case starkly illustrates the perils of neglecting that principle, since the petitioner's weeks-long detention without a valid remand was a direct consequence of officials failing to adhere to the letter of law once confusion arose.

16. To put the discussion in perspective, it is useful to revisit the foundational principles governing detention and the constitutional and statutory safeguards provided under the law. Section 61 of the Code of Criminal Procedure, 1898 mandates that "no police officer shall detain in custody a person arrested without warrant for a longer period than twenty-four hours without producing him before a Magistrate," excluding the time necessary for travel. This statutory protection is a reflection of the constitutional command under Article 10(2) of the Constitution of the Islamic Republic of Pakistan and is inviolable. In present case, the police undeniably breached the mandate of Section 61 Cr.P.C. As per reports furnished by Sessions Judge, Jaccobabad and Magistrate concerned, the petitioner, a minor, was apprehended on 30.05.2025 and was never produced before their Courts within the constitutionally and statutorily required timeframe. Instead, he was shuffled between different police stations under the verbal pretext of ***"rahdari remand"***. Such conduct is not only procedurally irregular but patently illegal and unconstitutional. Further, Section 63 of the Code provides that if, upon the expiration of twenty-four hours, there exist no sufficient grounds to justify further detention, the officer in charge of the police station *"shall release the person on his executing a bond, with or without sureties, to appear if and when so required"*. This provision imposes a positive obligation on the police to release an arrested individual on bond or surety if a remand has not been obtained from a competent Magistrate and there is no lawful basis to justify continued custody. Rather than comply with this clear statutory obligation, the police authorities kept the petitioner confined in violation of Section 63 Cr.P.C., thereby compounding the illegality of the detention. At that critical juncture—when neither the Magistrate nor the Sessions Judge assumed jurisdiction and no remand was obtained—the only lawful course of action was the release of the petitioner on personal bond under Section 63 Cr.P.C. It must further be emphasized that when an accused person is produced before a Magistrate within twenty-four hours of arrest, it is the solemn and statutory duty of the Magistrate to apply an independent judicial mind and make a lawful, reasoned determination regarding custody of the accused. Under Section 167

Cr.P.C., the Magistrate may either grant physical remand to the police for a specified period, or remand the accused to judicial custody if interest of justice so requires. However, if the Magistrate, upon examining the case, is of the view that the accused has not committed any cognizable offence or that the grounds presented do not warrant his further detention, it becomes his duty to discharge the accused by invoking the powers conferred under Section 63 Cr.P.C. This provision serves as a critical check against arbitrary or unlawful detention and ensures timely judicial oversight.

17. It is also pertinent to note that Section 33(3) of the Sindh Control of Narcotic Substances Act, 2024, pertains to the grant of remand by the nearest "Special Court" comprising a Judicial Magistrate of the First Class. The provision states: *"Notwithstanding anything hereinbefore contained, a remand may be granted by the nearest Special Court comprising a Judicial Magistrate of the First Class".* For ready reference, Section 33(3) of SCNS Act, 2024 is reproduced as under:

> "**33. Transfer of cases**. - (1) Where more Special Courts than one are established within the territorial jurisdiction of a High Court may, by order in writing transfer a case, at any stage, from one Special Court to another Special Court, in accordance with section 526 of the Code as if the Special Court were a Court of Sessions.
> (2) ------
> (3) Notwithstanding anything hereinbefore contained, a remand may be granted by the nearest Special Court comprising a Judicial Magistrate of the First Class".

However, since the "Special Court" contemplated under the Act has not yet been constituted or notified, a Judicial Magistrate possessing requisite territorial and subject-matter jurisdiction remains legally competent to consider and grant remand in such cases. The Magistrate cannot abdicate his statutory responsibility merely on the ground that a designated "Special Court" is yet to be notified. In such situations, the ordinary Magistrate is duty-bound to act under the law to prevent any legal vacuum, particularly where the case involves deprivation of liberty—more so when the detainee is a juvenile.

18. Moreover, **if a Magistrate's order is tainted by illegality, impropriety, or material irregularity, it is incumbent upon the Sessions Judge to intervene by exercising revisional powers under Sections 435 and 439-A Cr.P.C**. These powers are not merely discretionary but may be exercised suo motu even in the absence of any formal application. Section 439-A of the Code is particularly significant in this regard; it provides that, in the case of any proceeding before a Magistrate, where the record has been called for by the Sessions Judge or where such proceedings *"otherwise come to his knowledge"*, the Sessions Judge may exercise any of the powers conferred upon the High Court under Section 439 Cr.P.C. The expression *"otherwise comes to his knowledge"* carries substantial significance. It widens the scope of revisional jurisdiction by allowing the Sessions Judge to act upon any credible information—be it from court record, judicial observation, complaint, application, or even media reports. This phrase imports a positive judicial duty to ensure that illegality or injustice is not perpetuated merely for want of a formal petition. Regrettably, in the present case, despite the apparent irregularities and the unlawful continued custody of a juvenile, the Sessions Judge failed to exercise his revisional powers under Section 439-A Cr.P.C. in a timely or effective manner. This omission allowed an unconstitutional situation to persist, resulting in the prolonged illegal detention of the minor and a serious breach of his fundamental right to liberty under Article 9 of the Constitution. The Honourable Supreme Court of Pakistan, in its landmark judgment in ***Ali Gohar and others v. Pervaiz Ahmed and others (PLD 2020 SC 427)***, laid down authoritative guidelines on the exercise of revisional jurisdiction under Sections 435 and 439 Cr.P.C. The Apex Court held that only two jurisdictional facts are required to be satisfied: **first,** the matter must relate to "proceedings"; and **second,** such proceedings must be pending before an "inferior criminal court". Once these conditions are met, the Sessions Judge or the High Court is lawfully empowered to exercise revisional jurisdiction. The failure to do so in a case involving unlawful and prolonged detention, particularly of a juvenile, reflects not merely procedural lapse but a constitutional dereliction.

19. The police persisted in unlawfully detaining the petitioner without any lawful order either granting or refusing remand; hence, under compelling circumstances, the petitioner's mother was constrained to invoke the constitutional remedy of habeas corpus by filing successive petitions. This brings us to **Section 491 Cr.P.C.**, the venerable remedy for illegal detention. Section 491(1)(b) authorizes the High Court to direct that *"a person illegally or improperly detained in public or private custody within [its jurisdiction] be set at liberty."* The High Court's powers under Section 491 are broad and preventive – it can issue a rule *nisi*, have the detenu produced, inquire into the circumstances of arrest, and order immediate release if the detention is found to lack lawful authority. The petitioner's mother rightly invoked Section 491 (via HCP Nos. 78 and 84 of 2025) to challenge the police's actions. While the first habeas petition was disposed of when the police dissembled that the detainee was not in custody, the second succeeded in at least forcing acknowledgment that the petitioner had been arrested in the narcotics case. We underscore that **Section 491 is a crucial safeguard** in scenarios like this: it exists precisely to check executive excesses and to provide a swift remedy for unlawful confinement. Additionally, subsection (1A) of Section 491 allows the High Court to empower Sessions Judges to exercise similar habeas corpus powers in specified classes of cases. (It appears, however, that no general order under 491(1A) was in place, or at least the Sessions Judge did not feel authorized to act under it in this instance.) In summary, the Code's provisions leave no doubt that *holding an accused without remand or bail is illegal*. The **failure of the police to produce the petitioner within 24 hours and the judiciary's initial confusion** caused a lapse, but the High Court's doors under Section 491 Cr.P.C and Article 199 of the Constitution remained open – and indeed were opened by this petition, resulting in the petitioner's eventual release on this Court's order. This Court must ensure that such lapse does not recur, by clarifying the law and invoking Section 491 not only to free the detenue but also to compensate him, as discussed next.

20. Since the Sindh Control of Narcotic Substances Act, 2024, has been enacted by the Provincial Assembly, it is imperative to consider its constitutional status vis-à-vis the existing federal legislation, namely the Control of Narcotic Substances Act, 1997 (as amended Act, 2022), which was enacted by the Majlis-e-Shoora (Parliament). In this regard, Article 143 of the Constitution of the Islamic Republic of Pakistan, 1973, is relevant and is reproduced below for ready reference:

> ***"143. Inconsistency between Federal and Provincial Law: If any provision of an Act of a Provincial Assembly is repugnant to any provision of an Act of Majlis-e-Shoora (Parliament) which Majlis-e-Shoora (Parliament) is competent to enact, then the Act of Majlis-e-Shoora (Parliament), whether passed before or after the Act of the Provincial Assembly, shall prevail and the Act of the Provincial Assembly shall, to the extent of the repugnancy, be void."***

A bare reading of aforesaid constitutional provision makes it abundantly clear that in the event of any repugnancy or conflict between a provincial law and a federal law, the federal law shall prevail, and the provincial law, to the extent of the inconsistency, shall be rendered void. Therefore, if any provision of the Sindh Control of Narcotic Substances Act, 2024, is found to be inconsistent with the Control of Narcotic Substances Act, 1997, the latter shall override the former by operation of Article 143 of the Constitution. It is the constitutional mandate that ensures uniformity and supremacy of federal legislation in concurrent matters where both the Parliament and the Provincial Assemblies are competent to legislate. Accordingly, until and unless the field is vacated by the federal legislature or legislative competence is otherwise curtailed, any repugnant provision in the provincial enactment shall not be given effect to. Courts, therefore, must interpret and apply the SCNS Act, 2024, in a manner that avoids or harmonizes any conflict with the federal CNS Act, 1997, and where irreconcilable, must prefer the latter in accordance with the Constitution.

21. It is an undisputed fact that the "Special Courts" envisaged under the Sindh Control of Narcotic Substances Act, 2024,

for adjudication of offences thereunder, have yet to be notified and made operational. Moreover, there exists a clear and apparent conflict between the federal Control of Narcotic Substances Act, 1997 (as amended Act, 2022), and the Sindh Control of Narcotic Substances Act, 2024, particularly in relation to the jurisdiction and maintainability of bail applications. In this legal context—marked by the absence of designated courts, and the unsettled interplay between federal and provincial legislation—the applicability and enforceability of the provincial enactment stands in doubt and appears to attract the constitutional bar contained in Article 143 of the Constitution of the Islamic Republic of Pakistan, 1973. These circumstances, taken cumulatively, render the case of the petitioner one of further inquiry within the purview of Section 497(2), Cr.P.C. Accordingly, this Court is of the considered view that the petitioner has made out a prima facie case for grant of bail at this stage.

22. From undisputed facts, the petitioner's confinement from **30.05.2025 to 11.07.2025** was **entirely without lawful authority**. No Magistrate or Judge ever passed a written remand order for him during this period. The police's assertion that a Judicial Magistrate "verbally refused" the remand is alarming on its face – *either* the Magistrate had jurisdiction, in which case a written order should have been passed (granting or refusing remand), or he lacked jurisdiction, in which case the police ought to have presented the accused to the Sessions Judge or the nearest available court under the law. In both scenarios, a **written application and order** were required; a *verbal refusal* has no sanction in our criminal procedure. The SHO's decision to keep the petitioner on a **self-styled "rahdari" remand** (meant only for transferring an accused from one jurisdiction to another, not for detaining without court order) was a flagrant procedural lapse. It violated Section 167 Cr.P.C. (which governs police remand beyond 24 hours under judicial authority) and rendered the custody unlawful after the first day. Furthermore, the timing and manner in which the FIR was registered against the petitioner raise serious doubts about police bona fides. The record shows that only after the family persisted through Habeas Corpus Petitions did the

police belatedly register FIR No. 11/2025 on 31.05.2025, concocting a recovery of 1,950 grams of *charas* and a meager Rs. 300, conveniently after having failed to justify the detention earlier. No independent witnesses (*mashirs*) from the public were cited despite the alleged recovery taking place in a busy area, contravening Section 103 Cr.P.C., and the FIR appears to have been an attempt to retrospectively legitimize an unlawful custody. These aspects strengthen the case that the petitioner's confinement was not a result of mere oversight but rather involved elements of *malice and misuse of power* – a fact also alluded to by the allegation that the police had initially demanded bribes for his release. In such circumstances, the High Court's intervention must be two-fold: (1) to immediately release or bail out the detenue (already accomplished vide our short order dated 11.07.2025), and (2) to compensate the victim of illegal detention, as a recognition of the violation of his fundamental rights and a deterrent against future misconduct by officials. The jurisprudence of this Court supports the award of compensation in habeas cases. In **PLD 1999 Karachi 134 (Ali Ahmed v. M. Yaqoob Almani, DSP & 5 others)**, a learned Division Bench of this Court exhaustively delineated the powers under Section 491 Cr.P.C., concluding *inter alia* that the High Court may *"award monetary compensation to the detenu who was deprived of his freedom"*. The rationale is plain: where personal liberty guaranteed by the Constitution (Article 9) is trampled by executive excess, merely ordering release ***ex post facto*** is not always a sufficient remedy. The Court can – and in appropriate cases, should – grant compensation to vindicate the prisoner's right and to underscore the seriousness of the breach. In the present case, the petitioner, a minor of about 15–16 years, spent roughly **42 days in custody without any judicial remand**. Those were days of youth that he will not get back, and the trauma and indignity suffered cannot be erased. While no sum of money can truly compensate lost time or the mental agony endured, the law recognizes compensation as a token of acknowledgment and accountability. Considering the egregious facts, we hold that the petitioner (through his guardian) **deserves monetary compensation** for his unlawful detention. The mechanism for such

compensation, as we direct below, will be in exercise of our powers under Section 491 and Article 199, read with the High Court's inherent jurisdiction to do complete justice. We also find that the conduct of the police officers involved – notably the then SHO, Mashooque Ali Jakhrani, and others who kept the boy in custody – prima facie amounts to misuse of authority and unlawful confinement, which may attract departmental and even criminal action. However, in these proceedings, we confine ourselves to ordering compensation and leave it to the authorities concerned to take further action in light of this judgment.

23. It is appropriate to remind ourselves that the principles we uphold are not only enshrined in our man-made law but also in the higher ideals of **Islamic justice** which inform our Constitution. The Holy Qur'an: repeatedly emphasizes justice (*adl*) and compassion (*ehsaan*), and forbids oppression (*zulm*). One guiding verse states: ***"Lā yukallifu-llāhu nafsan illā wus'ahā; lahā mā kasabat wa 'alayhā mā-ktasabat."*** – *"Allah does not burden any soul beyond its capacity. It will have [the reward of] what [good] it has earned, and it will bear [the consequence of] what [evil] it has earned."*(Qur'an, Surah Al-Baqarah 2:286). This Divine mandate teaches that no person should carry a burden he cannot bear, and each is accountable only for his own deeds – a concept reflected in our law's insistence on personal liability and proportional punishment. Likewise, the Qur'an ordains in Surah Ash-Shu'uraa: ***"Wa jazā'u sayyi'atin sayyi'atun miṯluha, fa-man 'afā wa aṣlaḥa fa-ajruhu 'alā-llāh."*** – *"The recompense of an evil act is one equivalent to it; but whoever forgives and reconciles, his reward is due from Allah."* (Qur'an, Surah Ash-Shu'uraa 42:40). This verse encapsulates the principle of **proportional justice** – that punishment should fit the crime – and exalts the virtue of mercy and forgiveness. In the context of this case, it resonates as a caution that while drug offenses are condemnable, the response of the law must be measured and just, not excessive or arbitrary, lest it become an *evil* in itself. Furthermore, the **Hadith** explicitly forbids injustice. In a famous *Hadith Qudsi* (a saying of God as related by the Prophet), Allah says: *"O My servants, I have forbidden oppression (ẓulm) for*

Myself and have made it forbidden among you, so do not oppress one another." (Sahih Muslim, Hadith 2577). Unlawful detention of a person – denying someone's liberty without due process – is a form of oppression that our religion and law alike abhor. The Prophet (PBUH) also enjoined that the prayers of the oppressed have no veil between them and God. These teachings reinforce that *justice, accountability, and mercy* are paramount. As trustees of the law, we Judges and all those who operate the justice system must ensure that no individual is dealt with unjustly, that no one is punished or restrained except as **authorized by law** and based on evidence, and that the dignity (*karāmah*) of each person is respected as per Article 14 of our Constitution. In sum, our decision today – to fill the gaps of the statute, uphold fundamental rights, and compensate the victim of illegal detention – is in line with both the letter and spirit of Islamic tenets and the law of the land.

24. The grant of bail to the petitioner was predicated on a confluence of compelling circumstances, notably his status as a juvenile, the absence of lawful remand, and the manifest illegality of his continued detention. The petitioner, aged approximately 15 to 16 years as substantiated by his school certificate, was apprehended without lawful authority and kept in custody from 30.05.2025 to 11.07.2025, without ever being presented before a Magistrate or obtaining a written remand order from any competent court. This prolonged confinement, premised on a so-called "***rahdari remand***," stood in flagrant violation of Section 61 and 63 Cr.P.C. and Articles 9 and 10 of the Constitution. Furthermore, the registration of FIR No. 11 of 2025, alleging recovery of charas, was made only after persistent habeas corpus petitions were filed by the petitioner's mother, thereby casting serious doubt on the bona fides of the police. The lack of independent witnesses, failure to specify recovery particulars, and the allegation of bribery demand by police officials further undermined the prosecution's case. Given the petitioner's minority, clean antecedents, and the overarching illegality in procedure, this Court rightly intervened to safeguard his fundamental rights and granted

bail under its constitutional jurisdiction vide our short order dated ***11.07.2025*** with directions to face trial before trial Court.

25. For the foregoing reasons, this petition was allowed. The detention of the petitioner, Hafeezullah Lashari, from 30.05.2025 to 11.07.2025 is declared **illegal, void, and without lawful authority**. The petitioner has already been released on bail pursuant to the short order of this Court dated 11.07.2025. In order to avoid recurrence of such unlawful detention and to clarify the legal framework applicable under the Sindh Control of Narcotic Substances Act, 2024 ("SCNS Act"), the following **directions** are issued:

1. **Notification of Special Courts**: The Government of Sindh, through the Secretary, Law, Parliamentary Affairs and Criminal Prosecution Department, is directed to notify the Special Courts for the trial of offences under the Sindh Control of Narcotic Substances Act, 2024, and to undertake necessary amendments and align the relevant legal provisions in conformity with the constitutional mandate under the Constitution of the Islamic Republic of Pakistan, 1973 expeditiously.

2. **Interim Jurisdiction of Court of Sessions Judges**: Until such Special Courts are notified and functional, all cases registered under the SCNS Act, 2024 shall be tried by ordinary courts of original criminal jurisdiction, i.e., the Courts of District and Sessions Judges, as the "competent courts" within the meaning of Section 2(qq) read with Sections 29 & 30 (2) (ii) of the Act. Sessions Judges shall not refuse to take cognizance or proceed with trial solely on the ground that Special Courts have not yet been established. The exclusive jurisdiction under Sections 29 & 39 (2) (ii) of the Act remains in abeyance until such establishment.

3. **Bail Jurisdiction Limited to High Court**: In light of Section 35 of the SCNS Act, 2024, which precludes trial courts from granting bail, all bail applications (pre-arrest or post-arrest) in such cases shall lie exclusively before the High Court of Sindh.

These may be instituted as constitutional petitions under Article 199 of the Constitution, or where appropriate, as applications under Section 491, Cr.P.C., to be heard by learned Division Benches in constitutional jurisdiction. Subordinate courts, including Sessions Judges and Magistrates, are barred from entertaining or adjudicating bail in SCNS Act cases unless any amendment takes place by the Legislation.

4. **Expeditious Trial Timeline**: All trials under the SCNS Act, 2024 shall be concluded within six months as mandated by Section 35(2) of the Act.

5. **Remand Procedures**: Investigating Officers must strictly comply with the remand provisions of the Cr.P.C. All requests for physical or judicial remand must be made in writing and submitted to the nearest competent Magistrate or Sessions Judge. The practice of obtaining verbal remand or holding an accused on *rahdari* without a formal judicial order is unlawful. In accordance with the proviso to Section 29 SCNS Act and Section 167 Cr.P.C., a Magistrate of the First Class or Sessions Judge may grant remand where no Special Court exists. No person shall be detained beyond 24 hours without a valid remand order. Violations shall entail contempt proceedings and departmental disciplinary action.

6. **Compensation for Illegal Detention**: The petitioner is held entitled to compensation for his unlawful detention for 42 days. The SSP, Jaccobabad shall pay the petitioner compensation at Rs. 1,000 per day, totaling Rs. 42,000 (Rupees Forty Two Thousand), within thirty (30) days through a crossed cheque from the head of investigation budget as a temporary arrangement. However, he may initiate recovery of the said amount from salaries or personal accounts of the delinquent police officers being investigation lapses after affording them due process. This direction is issued under Section 491 Cr.P.C. and Article 199 of the Constitution to enforce the petitioner's fundamental rights and is supported by precedent laid down in

Ali Ahmed v. Muhammad Yaqub Almani DSP Qasimabad, Hyderabad & Others [PLD 1999 Kar. 134]. Compliance report shall be submitted by the SSP, Jaccobabad through the Additional Registrar of this Court within forty-five (45) days.

7. **Circulation to Subordinate Judiciary (MIT-II)**: The learned MIT-II is directed to circulate this judgment to all District & Sessions Judges in Sindh. The District & Sessions Judges shall ensure its dissemination to all Judicial Magistrates, and other criminal courts within their jurisdiction. Written confirmation of circulation shall be submitted to the learned MIT-II within one month.

8. **Circulation to Police Authorities (IGP Sindh)**: A copy of this judgment shall be sent to the Inspector General of Police, Sindh, who shall disseminate it to all DIGs, SSPs, and SHOs across the province. Police personnel must be informed, through official directives, that:

    - No person shall be detained without prompt judicial remand;
    - All arrested accused in narcotics cases must be produced before concerned Magistrate within 24 hours till establishment of Special Courts; and
    - Non-compliance will entail personal liability and disciplinary action.
    - The IGP shall file a compliance report with Additional Registrar of this Circuit Court within sixty (60) days detailing the implementation steps taken.

The above constitutes the reasoning in support of our short order dated 11.07.2025. Let the copy of this judgment be communicated to all concerned quarters for compliance in its letter and spirit.

JUDGE

JUDGE

'Approved for reporting'