

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No.D-863 of 2025

**Before:**

*Mr. Justice Arbab Ali Hakro;*  
*Mr. Justice Abdul Hamid Bhurgri.*

Petitioners : 1. Mst. Chuttal wife of Muhammad Khan  
2. Mst. Wadhul d/o Saindad Bullo,  
through Mr. Khan Muhammad Sangi,  
Advocate.

Respondents : Province of Sindh and three others,  
through Mr. Ali Raza Baloch, Additional  
Advocate General  
  
Mr. Aftab Ahmed Shar,  
Additional Prosecutor General Sindh.

***Date of Hearing.*** ***24.06.2025.***

***Date of Order.*** ***24.06.2025.***

***Date of reasoning:*** ***26.06.2025***

**ORDER**

**Abdul Hamid Bhurgri, J.**- The petitioners through this petition seek their post arrest bail in the crime No.139/2025 for offence punishable Under Section 9(1)-3(b) of the Sindh Control of Narcotic Substances, Act, 2024 (hereinafter it will be referred as Act, 2024) of PS “C” Section district Shikarpur.

**2.** According to the First Information Report (FIR), on 02.06.2025 at approximately 2100 hours, the complainant ASI Mumtaz Ali Pathan, accompanied by PC Abdul Razak, PC Ahmed Khan, and DPC Yasir Ali, departed Police Station pursuant to entry No. 40 for routine patrol. Whilst near Mustafai Civil Hospital, the complainant purportedly received confidential intelligence suggesting that two female narcotics dealers had travelled from Ghotki to Sukkur with contraband and were en route towards Gadani Fatak via Lakha Peer. Upon reaching the indicated location, the patrol team observed two women alighting from a vehicle, each carrying a shopper bag, at approximately 2130 hours. Due to the unavailability of private witnesses, PCs Abdul Razak and Ahmed Khan were appointed as mashirs. The officers intercepted both women, and upon inquiry, one disclosed her identity as Mst. Chatool. A search of her shopper revealed one big and one small piece of charas, cumulatively

weighing 625 grams, which was then duly sealed. Her personal search yielded four currency notes of Rs.100/- each from the pocket of her kameez. The second woman identified herself as Mst. Wadhul. A similar search of her shopper disclosed one big and one small piece of charas, weighing 560 grams, which was likewise sealed. Her personal search produced three currency notes of Rs.100/- each from her garment. The complainant prepared the formal memo of arrest and recovery on the spot. Thereafter, both the accused and the recovered articles were taken into custody and transported to the police station, where the instant FIR was registered.

**3.** Learned counsel for the petitioners submits that the quantity of narcotic substance allegedly recovered is negligible and falls within the ambit of the non-prohibitory clause. It is contended that the prosecution's entire case is premised solely upon the testimony of police officials, absent any form of independent corroboration, despite the alleged incident having transpired in a densely populated locality. No video graphic or technological evidence has been adduced to substantiate the recovery. Furthermore, the FIR was registered by a police official lacking the requisite legal authority to do so. It is further submitted that one Mai Waseema solemnized a free-will marriage with one Abdul Qudoos, and the petitioners are being implicated solely on account of their alleged involvement in facilitating said marriage. Pursuant to these allegations, the police unlawfully arrested the petitioners from their residence. Counsel submits that a petition under Section 491 Cr.P.C. was duly filed for their recovery, and a formal protest was also lodged against the illegal conduct of the police party. The said protest, it is asserted, provoked the ire of the police officials, thereby resulting in the malicious and false implication of the petitioners in the present matter. Accordingly, the petitioners seek the grant of bail.

**4.** Conversely, the learned Additional Prosecutor General opposes the prayer for bail. However, he does not controvert the assertion that the recovered quantity of the narcotic substance falls within the non-prohibitory clause, nor does he dispute the absence of any independent witness.

5. We have heard the counsel for the parties and have given record our anxious consideration.

6. Although Section 35(1) of the Sindh Narcotic Substances Act, 2024, places a bar on the grant of bail by trial courts, such embargo does not preclude the constitutional jurisdiction of this Court under Article 199 of the Constitution. In circumstances where no alternate statutory remedy is available, and the accused is left without recourse, a constitutional petition for bail is maintainable to safeguard fundamental rights and ensure that the due process of law is upheld. The section 35(1) of the Act, 2024 reads as under:-

*“Notwithstanding anything contained in section 496 and 497 of the Code, the bail shall not be granted to an accused person charged with an offence under this Act”.*

7. In view of the exceptional nature of the statutory bar and in the absence of any efficacious alternative remedy, this petition is held to be maintainable. Reliance is placed on the authoritative judgment of the Honourable Supreme Court in ***Khan Asfandyar Wali v. Federation of Pakistan (PLD 2001 SC 607)***.

8. While examining the case record, it was observed that in the FIR, the name of Petitioner No.1 is written as Mst. Chatal w/o Muhammad Khan and d/o Tharo, whereas in the memo of petition, her husband's name is mentioned as Saindad. Similarly, Petitioner No.2 is shown in the FIR as d/o Muhammad Khan, while in the petition, her parentage is shown as d/o Saindad. When this discrepancy was pointed out, learned counsel for the petitioner submitted that the prosecution had wrongly recorded the spouse and parentage of the petitioner with *mala fide* intent. He produced the CNIC of Petitioner No.1, which was shown to the Investigating Officer present in Court, who confirmed her identity. We also examined the photograph of Petitioner No.1 from the CRO record produced by the prosecution and found that she is the same person. Therefore, there remains no doubt that the petitioners seeking bail are the same persons named in the FIR.

9. The alleged recovery falls under Section 9(1)-3(b) of Sindh Control of Narcotics Substance, Act, 2024 carries imprisonment which may

extend to nine years but shall not be less than five years and it is settled law that at bail stage lesser punishment is to be considered, accordingly, alleged respective recovery from both the petitioners does not fall within the prohibited degree. Importantly, the recovery was shown to have been made from a thickly populated locality, yet no independent witness was cited or associated at the time of recovery. It is now well settled principle that where the prosecution's case hinges entirely on police testimony, uncorroborated by natural witnesses, the benefit of doubt is to be extended at the bail stage. Reliance is placed on ***Muhammad Arshad v. the State (2022 SCMR 1555)***.

**10.** The absence of electronic evidence such as video recording and the questionable competence of the complainant officer further weaken the prosecution's stance. The Honourable apex Court in the case of ***Muhammad Abid Hussain v. The State (2025 SCMR 721)*** has emphasized the indefensible nature of procedural fairness and technical evidence in narcotics cases. It was held that the absence of video footage and independent witness seriously compromise the case of prosecution. Furthermore, in the case of ***Zahid Sarfaraz Gill v. The State (2024 SCMR 934)***, the Court has emphasized on video recording in narcotic cases.

**11.** The petitioners are women with no previous criminal record. It is also an admitted fact that an application under Section 491, Cr.P.C. was filed by a relative of the petitioners three days prior to the alleged incident, seeking their recovery from illegal detention. This fact creates a prima facie doubt regarding the circumstances under which the alleged recovery was affected, and warrants further inquiry into the prosecution case.

**12.** Where the statute excludes the right of bail, strict adherence to legal procedures and statutory safeguards becomes all the more essential. Any lapse in compliance undermines the fairness of the process and may lead to miscarriage of justice. The greater the restriction on liberty, the stricter the obligation on authorities to act within the bounds of law.

**13.** These factors bring the case within the domain of further inquiry. Accordingly, this petition is allowed and the petitioners are admitted to post-arrest bail, subject to their furnishing solvent sureties in the sum of Rs.50,000/- (Rupees fifty thousand) each with a P.R bond in the like amount to the satisfaction of learned Additional Registrar of this Court.

**14.** After furnishing the required surety, the petitioners are directed to appear before the learned trial Court on each and every date of hearing without fail. In case of non-appearance or violation of any of the conditions of bail, the learned trial Court shall be at liberty to cancel the bail of the petitioners.

**15.** Needless to state, the observations hereinabove are tentative in nature and shall not prejudice the trial court in his adjudication of the matter on merits.

**16.** Above are the reasons of our short order of even date.

Judge

Judge

ARBROHI/PS