

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No.D-728 of 2025

Before:

Mr. Justice Arbab Ali Hakro;

Mr. Justice Abdul Hamid Bhurgri.

Petitioner : Waseem Ahmed son of Muhammad Sharif, through Mr. Achar Khan Gabol, Advocate.

Respondents : The State and three others, through Mr. Ali Raza Baloch, Additional Advocate General Sindh. 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 petitioner being an accused seeks his post arrest bail in a case crime No.46/2025 of PS Setharja, district Khairpur for offence punishable Under Section 9-1(b) CNS Act, the Sindh Control of Narcotic Substances, Act, 2024 (hereinafter it will be referred as Act, 2024).

2. According to the First Information Report (FIR), on 14.05.2025 at approximately 1400 hours, the complainant ASI Rahimdad, accompanied by his subordinates PC Sajid Hussain, PC Amir, PC Zaheer Ahmed, and DPC Mureed Hussain, departed the police station pursuant to entry No. 12 for routine patrolling. While conducting patrol duties near Sim Nalo Satro Link Road, a motorcyclist was observed emerging from Saindad Solangi village, with a black plastic shopper affixed to the petrol tank of his motorcycle. The patrol team intercepted and apprehended the individual at approximately 1430 hours. Due to the unavailability of private mashirs, PCs Sajid Hussain and Zaheer Ahmed were designated as official mashirs. Upon inquiry, the apprehended individual disclosed his identity as Waseem Ahmed. A search of the plastic shopper allegedly revealed a quantity of bhang weighing 5200 grams, which was sealed on site. A subsequent body search yielded two currency notes of Rs. 100 each, along with an Oppo mobile phone from his right pocket. The

accused also failed to produce any documentation pertaining to the motorcycle. A memo of arrest and recovery was prepared by the complainant in accordance with prescribed procedure, following which the accused and the seized contraband were brought to the police station, where the FIR was formally lodged.

3. Learned counsel for the petitioner contended that his client has been falsely implicated at the hands of the police owing to his refusal to comply with an illicit demand for bribe. It was submitted that the alleged offence does not fall within the ambit of the prohibitory clause, and that the continued detention of the petitioner no longer serves any legitimate investigatory purpose. It was further argued that the arrest took place in a densely populated locality, yet no private individual was joined as a mashir, thereby breaching the mandatory provisions of Section 103 of the Code of Criminal Procedure. The learned counsel maintained that in light of the aforementioned circumstances, the matter warrants further inquiry as contemplated under Section 497(2) Cr.P.C., and accordingly prayed for the grant of post-arrest bail.

4. In rebuttal, the learned Additional Prosecutor General, Sindh, vehemently opposed the bail application. He submitted that the petitioner was apprehended red-handed at the scene of the offence, and that his name has been specifically mentioned in the FIR. On these grounds, he argued that the petitioner is not entitled to the concession of post-arrest bail and urged for the dismissal of the bail petition.

5. We have heard learned counsel for the parties and examined the record with circumspection.

6. In view of the statutory bar contained in Section 35(1) of the Sindh Control of Narcotics Substances Act, 2024, the ordinary remedy of bail is not available. For the sake of convenience section 35(1) of the Act, 2024 is reproduced 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. However, such restriction does not preclude the constitutional jurisdiction of this Court under Article 199 of the Constitution, which remains available where no alternate or efficacious remedy exists and the fundamental right to liberty is at stake. It is well established that the right to liberty is a fundamental right, guaranteed Under Articles 9 and 14 of the Constitution, where such liberty is curtailed by operation of statutory bar, regardless of the individual merits of the case, the High Court's Constitutional jurisdiction remains available to ensure that the mandate of the Constitution is not defeated by the procedural rigidity. This Constitution Petition is held to be maintainable. Reliance is placed on the judgment of the Honourable Supreme Court in case of ***Khan Asfandiyar Wali v. Federation of Pakistan (PLD 2001 SC 607)***.

8. On merits, the alleged recovery of 5200 grams of Bhang falls under Section 9-1(b) of Sindh Control of Narcotics Substance, Act, 2024 carries imprisonment which may extend to seven years but shall not be less than three years and it is settled law that at bail stage lesser punishment is to be considered, accordingly, alleged recovery from the petitioner does not fall within the prohibited degree. Alleged recovery proceedings were conducted without associating any independent witness, which casts doubt on the credibility of the prosecution's version. The FIR has been lodged by an officer who prima facie does not appear to be duly authorized under the Act. No video recording of the incident has been produced as required under the statutory framework. The petitioner also has no prior criminal record. The alleged recovered quantity of Bhang (Hemp) does not fall within the definition of commercial quantity under the Act, and as such, the offence does not attract the prohibitory clause. It is a settled principle that in cases not falling within the prohibitory clause, bail is to be granted as a rule unless exceptional circumstances exist. In these circumstances, the case calls for further inquiry.

9. 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.

10. It is a settled principle that where the law imposes a bar on bail, the procedural safeguards provided under the same statute must be strictly observed by the prosecution. Failure to comply with mandatory requirements such as association of independent witnesses, proper documentation, lawful authorization of the complainant officer, and video recording where prescribed-seriously undermines the prosecution's case. When liberty is curtailed through exceptional statutory bars, the obligation to act in strict conformity with the law must be enforced with equal vigour.

11. Accordingly, the petitioner is admitted to post-arrest bail subject to furnishing solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand) with P.R. bond in the like amount to the satisfaction of learned Additional Registrar of this Court.

12. After furnishing the required surety, the petitioner is 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 petitioner.

13. Needless to observe, the foregoing findings are tentative in nature and shall not prejudice the trial Court in determining the matter on merits.

Judge

Judge

ARBROHI/PS