

ORDER SHEET
**HIGH COURT OF SINDH CIRCUIT COURT,
HYDERABAD**

C.P. No.D-1077 of 2025
[Imran Ali vs. The State]

BEFORE:

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Yousuf Ali Sayeed

Petitioner : Through Mr. Meer Ahmed Mangrio, Advocate

Respondent : The State through Mr. Muhammad Ismail Bhutto, Addl. A.G. &
Mr. Siraj Ahmed Bijarani A.P.G

Date of hearing
& Decision: 07.07.2025

ORDER

ADNAN-UL-KARIM MEMON J:- Petitioner Imran Ali prays for his release on post-arrest bail in FIR No. 215 of 2025 registered at Police Station Kotri under Section 9(1) Sr. No. 3(b) of the Sindh Control of Narcotic Substances Act, 2024.

2. On May 11, 2025, petitioner was arrested on the spot by ASI Pir Abdul Waheed Chandio as he was allegedly possessing 700 grams of chars. SIP Barkat Ali Qambrani posted at Police Station Kotri led the investigation and submitted the final challan on June 30, 2025, which was accepted by the trial court on the same day. As per progress report of trial court the case is now fixed on July 7, 2025 for supply of copies to the accused.

3. Petitioner's counsel compelled for post-arrest bail, asserting that the petitioner is innocent and has falsely been implicated in this case with malafide intentions, ulterior motives, and due to non-payment of gratification to the police; that there is procedural violation of Section 17(2) Sindh CNS Act 2024 as the police has failed to record the video of the alleged incident, seizure and arrest. Per learned counsel, it is also a non-compliance of order of Supreme Court as directed in the case of *Zahid Sarfaraz Gill* (2024 SCMR 934) and seriously undermines the prosecution's case; that from the Statement of police, there appears no independent corroborative evidence and there are omissions in the FIR regarding description of police motorcycles and lack of details of sealing of recovered substance; that recovery of only two notes of Rs.100 is insufficient to prove purported dealing with the customer;

that petitioner has been in custody since May 11, 2025, with no trial progress, which is violation of Article 9 of the Constitution; that Section 35 of the Sindh Control of Narcotics Substance Act, 2024 places an embargo upon the trial court from entertaining bail applications registered under the Act *ibid*, therefore, the petitioner having no alternative remedy has approached this Court under its Constitutional jurisdiction. He lastly prayed for bail.

4. Learned A.P.G has objected to the grant of bail to the petitioner on the ground that he was arrested at spot and charas was recovered from his possession; that petitioner has failed to show any enmity and / or malafide on the part of police. Learned Additional A.G. adopted the arguments of learned APG. However, they both conceded that there is no previous criminal record of the petitioner.

5. Heard learned counsel for the parties and perused the record with their assistance and the case law cited at the bar.

6. The petitioner case under the Sindh Control of Narcotic Substances Act, 2024, *prima facie* warrants bail due to significant procedural irregularities and a lack of credible evidence. There are material omissions in the FIR, regarding incomplete description of police vehicles and insufficient details of sealing and transmission of allegedly recovered substance to the Chemical lab. The prosecution case solely relies upon interested police officials, lacking independent corroboration. The petitioner's allegation of prior arrest and extortion demands *prima facie* suggests potential malicious intent and fabricated charges. The recovery of a "paltry sum of Rs. 200/-" is insufficient to establish a commercial deal, distinguishing this case from those involving large quantities. The petitioner has been incarcerated since May 11, 2025, with no significant trial progress. This prolonged detention without trial *prima facie* violates the fundamental right to liberty under Article 9 of the Constitution, exacerbated by the State's delay in establishing Special Courts under the new Act. While Section 35 of the Sindh CNS Act, 2024, restricts trial courts from granting bail, this Court's constitutional jurisdiction under Article 199 of the Constitution remains intact. This allows intervention when fundamental rights are violated or a miscarriage of justice is apparent, particularly given the procedural lapses and doubts in the prosecution case. In such circumstances, granting bail aligns with the principle that an accused is presumed innocent until proven guilty, and bail should not be withheld as punishment, especially when the case requires further inquiry. Besides it is stressed by the Supreme Court in *Zahid Sarfaraz Gill* (*supra*) regarding the importance of modern devices in narcotic cases to avoid foisting and in absence thereof, this case also requires further inquiry, particularly in view of the meager quantity involved, where the possibility of false implication cannot be ruled out.

7. We have noticed that the case of Ateebur Rehman v. The State (2016 SCMR 1424), which involved recovery of 1014 grams of heroin, and Aya Khan and another v. The State (2020 SCMR 350), which involved recovery of 1100 grams of heroin, and bail was granted by the Supreme Court. In principle, bail does not mean acquittal of the accused but only change of custody from police to the sureties, who, on furnishing bonds take responsibility to produce the accused whenever and wherever required to be produced. On the aforesaid proposition, we are fortified with the decision of Supreme Court in the case of Haji Muhammad Nazir v. The State (2008 SCMR 807).

8. Keeping in view the meager quantity of narcotics recovered, which carries sentence of less than nine years and the prosecution's failure to record video of the recovery as mandated by the Act 2024, this Constitutional Petition for bail has force.

9. These are the reasons for our short order of even date, by which the Petition for bail was allowed and the Petitioner was granted post-arrest bail in Crime No. 215 of 2025, registered at Police Station Kotri under Section 9(i) 3(B) of the Sindh Control of Narcotic Substances Act, 2024 subject to furnishing solvent surety in the sum of Rs. 1,00,000/- and P.R. Bond in the like amount to the satisfaction of trial Court.

10. The observation recorded hereinabove is tentative and shall not prejudice the case of either party at trial. However, the trial Court shall endeavor to examine the Complainant / his witnesses positively within a reasonable time. If the charge has not been framed, the same shall be framed before the date so fixed by the trial Court, and a compliance report shall be submitted through the Additional Registrar of this Court. The Additional Registrar shall ensure compliance with the order.

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The most critical factor is the undisputed failure of recording video record at the time of seizure, inspection and arrest which is a mandatory requirement under Section 17(2) of the Sindh CNS Act, 2024, as the police party had prior information.