

**IN HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

C.P No. D-755 of 2025
[Nisar Ahmed v. The State & others]

Before:
Mr. Justice Arbab Ali Hakro
Mr. Justice Riazat Ali Sahar

Counsel for Petitioner: Mr. Farhad Ali Abro, Advocate

Counsels/ Representatives for
Respondents: Mr. Siraj Ahmed Bijrani, APG

Date of Hearing 27.05.2025

Date of Judgment 27.05.2025

JUDGMENT

RIAZAT ALI SAHAR, J. Through this judgment, we intend to dispose of captioned petition, wherein the following relief is sought:

“a That this Honorable Court may be pleased to enlarge the petitioner/accused on bail in connection with FIR NO.54/2025 registered at PS City Hyderabad, District Hyderabad and release him from custody pending trial.

b That this Honorable Court may kindly be pleased to declare the arrest of the petitioner/ accused is beyond the scope of Section 17(2) and 17(3) of the Sindh Control of Narcotics Substance act 2024 as the present FIR is registered in sheer violation of express provision of law.

c Any other relief deemed fit and proper that this court may be awarded to the petitioner.”

2. There exists no express provision regarding the grant of bail under the Sindh Control of Narcotics Act, 2024 (hereinafter referred to as “the Act”), as is evident from the language employed in Section 35, which reads as under:

35. No bail is to be granted in respect of certain offences- (1) Notwithstanding anything contained in sections 496 and 497 of the Code, the bail shall not be granted to an accused person charged with an offence under this Act.

However, as per the order dated 22-04-2025 passed by the Larger Bench of this Court at its Principal Seat in Constitutional Petition No. D-937 of 2025, the Honourable Acting Chief Justice of Sindh, being the author of the judgment, was pleased to lay down that in view of the absence of any provision regarding the grant of bail under the Sindh Control of Narcotics Act, 2024 (“the Act”), all matters pertaining to bail under the said Act shall fall exclusively within the domain of the Constitutional Bench of the High Court of Sindh for consideration under its constitutional jurisdiction.

3. Tersely, on 03.05.2025 at about 0100 hours, SIP and staff of P.S. City, while on patrol near Sent Marry Chowk, apprehended a suspicious man, later identified as Nisar Ahmed, carrying a black plastic shopper. Upon search, 2160 grams of charas in labelled red-wrapped plates and Rs.500/- were recovered. The accused admitted to selling charas for livelihood. The narcotics were sealed for chemical analysis, and FIR under Section 9 (i) (3) (c) of the CNS (Amendment) Act, 2024 was lodged.

4. Mr. Farhad Ali Abro, learned counsel for petitioner argued there are no reasonable grounds to believe they committed the alleged offence under Section 9(c) of the Sindh Control of Narcotic Substances Act, 2024. Learned counsel argues that the FIR was registered maliciously at the behest of a politically influential person in retaliation for a peaceful protest over water scarcity. The counsel claims no narcotics were recovered from their exclusive possession, the alleged arrest and recovery were staged at the police station, and the FIR suffers from legal defects—particularly the

absence of independent mashirs in a densely populated area, in violation of Section 103 Cr.P.C. Furthermore, the counsel also stress that no video recording was made as required under Section 17(2) of the amended Act. He alleges that all witnesses are police officials with vested interests, there was no corroborative evidence, and that their implication is politically motivated and fabricated. Learned counsel highlights petitioners clean antecedents, local residence, and willingness to cooperate, contending that bail should not be withheld as a form of punishment, especially since wrongful incarceration is irreparable if they are later acquitted. Hence, he seeks bail on grounds of further inquiry, mala fide, and lack of credible evidence.

5. Mr. Siraj Ahmed Bijarani, the learned Assistant Prosecutor General (APG) opposes the bail, arguing that the Petitioners were caught red-handed with commercial quantities of charas under Section 9(c) of the Sindh CNS Act, 2024, attracting the prohibitory clause. The recovery was lawfully made on credible spy information, with all legal formalities duly observed, including proper documentation and dispatch for chemical analysis. The absence of private mashirs is explained by public reluctance in narcotics cases, and the testimony of police officials cannot be discarded solely on that basis. Allegations of political victimisation are termed baseless and unsubstantiated. The APG contends that while video recording under Section 17(2) is desirable, its absence is not fatal to the prosecution case. Given the gravity of the offence, the quantity of narcotics recovered, and the statutory presumption of

guilt, the Petitioners have failed to establish grounds for further inquiry, and therefore are not entitled to the concession of bail.

6. Heard. Record Perused.

7. The Court highlights that Section 35 of the Sindh CNS Act, 2024 serves two essential functions: firstly, it aims to deter narcotics-related offences by limiting the grant of bail in grave cases; secondly, it seeks to protect the rights of the accused by mandating that trials be concluded within six months, thereby preventing unnecessary pre-trial detention. Additionally, Section 17(2) enhances procedural safeguards by making it compulsory to video-record warrantless raids and recoveries, thereby promoting transparency and curbing potential misuse—an approach endorsed in Zahid Sarfraz Gill v. the State [2024 SCMR 934] and Muhammad Abid Hussain v. The State [2025 SCMR 721]. The Court clarifies that while the volume of the recovered contraband may prima facie invoke the prohibitory clause of Section 497 Cr.P.C., it does not automatically preclude the grant of bail. As elucidated in Kunwar Singh v. the State [2023 YLR Note 31], bail remains permissible where factual circumstances, compliance with legal procedure, and the reliability of evidence warrant further judicial scrutiny. What ultimately matters are whether the prosecution has made out a credible prima facie case, and whether the defence has raised sufficient doubt to justify further inquiry under Section 497(2) Cr.P.C. without effectively converting the bail hearing into a full-fledged trial. A more extensive deliberation on this principle may be found in Syed Amjad Shah and

another v. The State and others [C.P No. D-797 of 2025, High Court of Sindh, Circuit Court Hyderabad].

8. The Court underscores that Section 35 of the Sindh CNS Act, 2024 serves a dual function: firstly, it seeks to deter drug offences by restricting bail in serious cases; secondly, it ensures protection of the accused by requiring that trials be concluded within six months, thereby preventing prolonged pre-trial detention. Additionally, Section 17(2) enhances procedural transparency by mandating video recording of warrantless raids and recoveries, thereby safeguarding against potential misuse—an approach upheld in Zahid Sarfraz Gill v. the State [2024 SCMR 934] and Muhammad Abid Hussain v. The State [2025 SCMR 721]. The Court further clarifies that although the volume of recovered narcotics may attract the prohibitory clause under Section 497 of the Criminal Procedure Code, this does not constitute an absolute restriction on the grant of bail. The crucial test is whether the prosecution has established a credible prima facie recovery, and whether the defence has raised reasonable doubt warranting further inquiry under Section 497(2) Cr.P.C., without turning the bail proceedings into a substitute for a full trial. A more detailed discussion of this legal framework can be found in Syed Amjad Shah and another v. The State and others [C.P No. D-797 of 2025; High Court of Sindh; Circuit Court, Hyderabad].

9. In view of the foregoing analysis, it is manifest that the prosecution has failed to produce video or photographic evidence as mandated under Section 17(2) of the Sindh Control of Narcotics Substances Act, 2024, which casts serious doubt upon the legality of the recovery and arrest. The absence of private mashirs, despite the alleged incident occurring in a public and accessible area, and the lack of independent corroboration, further undermine the credibility of the prosecution's case. More so, sections 16, 17 and 18 under Chapter-II of the Act are interconnected with each other. Moreover, the minimum sentence for the alleged offence does not fall within the prohibitory clause, and the petitioners have made out a case that calls for further inquiry under Section 497(2) Cr.P.C. *Prima facie*, it appears that the material on record does not connect petitioner to the commission of offence. In the interest of justice, procedural fairness, and to prevent potential abuse of prosecutorial powers, we are of the considered view that the petitioners are entitled to the concession of bail. Accordingly, the petition is ***allowed***. The petitioner, Nisar Ahmed son Sardar Ali Qureshi shall be released on bail upon furnishing solvent surety in the sum of Rs. 200,000/- (Rupees Two Hundred Thousand only) each and a personal bond in the like amount to the satisfaction of the learned trial Court.

10. Needless to say, any observation made hereinabove is tentative in nature and shall not influence the outcome of the trial.

JUDGE

JUDGE

****Abdullahchanna/PS****