

**ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

Const. Petition No.D- 890 of 2025

Date of hearing	Order with signature of Judge
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Before:
Mr. Justice Muhammad Saleem Jessar
Mr. Justice Riazat Ali Sahar

Petitioner : **Zulfiqar Ali Kubar** through Mr. Imtiaz Ali Jogi, Advocate.

The Respondents: **The State and Province of Sindh** through M/s Syed Sardar Ali Shah, Additional P.G and Agha Athar Pathan, Assistant Advocate General Sindh a/w SIP/complainant Rab Dino Shar SIP/SIO Datar Dino Shar and SIP Ali Murad on behalf of SSP, Khairpur.

Date of Hearing : **08-07-2025**
Date of Order : **08-07-2025**

O R D E R

RIAZAT ALI SAHAR, J. By way of this petition, petitioner Zulfiqar Ali son of Mian Dad by caste Kubar, seeks his release on post arrest bail in crime No.38 of 2025 under section 9 (b) CNS (Amendment) Act, 2022, registered at Police Station Bozdar Wada, District Khairpur for allegedly possessing five KGs of Bhang.

2. Since facts of the prosecution case are already mentioned in the FIR as well as in the memo of petition; therefore, there is no need to reproduce the same. Reliance is placed on the case of **Muhammad Shakeel v. The State & others** (PLD 2014 SC 458).

3. Record reflects, interim challan was submitted by the police on 19.06.2025 and final report under Section 173 Cr.P.C is yet to be submitted after collecting Chemical Examiner's report. Since the statute does not provide a specific provision for filing a bail application, and there being no alternate remedy, the petitioner has maintained the instant petition

4. Learned counsel for the petitioner argued that the alleged recovery of contraband substance, viz. Bhang weighing five kilograms, is a meager quantity. He next submitted although the punishment for offence under the CNS (Amendment) Act, 2022) is “may extend to seven years, it shall not be less than three years”, however, the lesser quantum of sentence has been provided which does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C. He, therefore, contended that the case against the petitioner requires further inquiry and prayed for grant of bail.

5. Learned Law Officers, in view of above facts and circumstances, have recorded their no objection.

6. We have heard learned counsel for the petitioner as well as law officers and have gone through the material made available before us on record.

7. Allegedly, the recovery of five KGs of Bhang was effected from the possession of petitioner; however, perusal of the Sindh Amendment Act, 2022 reveals that the offence in question is punishable with imprisonment which may extend to seven years, it shall not be less than three years. As per settled legal principles, while deciding bail pleas, the lesser punishment is to be considered. The offence with which the petitioner is charged does not fall within the prohibitory clause of Section 497 Cr.P.C. and, therefore, grant of bail is a rule while its refusal is an exception, as enunciated by the Hon’ble Supreme Court of Pakistan in the case of **Tarique Bashir v. The State** (PLD 1995 SC 34).

8. In view of the foregoing, we are of the opinion that *prima facie* the petitioner has succeeded to make out a case for grant of bail. Accordingly, the instant Constitutional Petition was allowed by our short order dated 08.07.2025, whereby the petitioner, **Zulfiqar Ali Kubar**, was ordered to be released on bail upon furnishing solvent surety in the sum of **Rs.50,000/- (Rupees Fifty Thousand)** and P.R bond in the like amount to the satisfaction of the 1st Civil Judge & Judicial Magistrate, Mirwah / trial Court or as the case may be. These are the reasons in support of our above short order.

9. It is clarified that the observations made hereinabove are tentative in nature and shall not influence the learned trial Court during adjudication of the case on merits.

JUDGE

JUDGE