

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Const. Petition No.D- 710 of 2025

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

Petitioner : **Asadullah Dayo** through Mr. Shafique Ahmed Leghari, Advocate.

The Respondents: **The State and Province of Sindh** through M/s Syed Sardar Ali Shah, Additional P.G and Agha Athar Pathan, Assistant A.G.

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

O R D E R

RIAZAT ALI SAHAR, J.- By way of this order petitioner Asadullah Dayo seeks his admission on post arrest bail in crime No.112 of 2024 registered with Police Station Sangi, District Sukkur for offence punishable under section 9 (3) (c) Sindh Control of Narcotic Substances Act, 2024 for allegedly possessing 2460 grams of Charas. The petitioner filed such bail plea before the Court of Additional Sessions Judge-III/MCTC-II/special Judge for CNS, Sukkur (Trial Court). The trial Court after due notice and hearing the parties dismissed his bail application by way of its order dated 21.04.2025. Hence this petition has been maintained.

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. Learned counsel for the petitioner argued that the petitioner is innocent and has falsely been implicated by the police and the alleged recovery has been foisted upon him. He next argued that the recovery so affected from petitioner is 2460 grams of charas is meager quantity besides the punishment for offence as provided under the Act is/may extend to 14 years and not less than 9 years. Hence, submits when the statute provides two punishments; then lesser one may be considered at bail stage. He further argued that by virtue of Section 17(2) of the Act (as amended), the police official was under obligation to record video of recovery proceedings but he failed even by virtue of Section 17 of the Act, being ASI was not competent to seize the narcotics or make arrest of the accused without warrant or investigate the case. He next submits that inspite of the directions issued by this Court, province of Sindh has not established the tribunals for trial of certain cases and the Court below/Trial Court was not competent to take cognizance of the offence even then he had entertained the bail application, though under the Amended Act no provision for bail has been provided by the legislature. He, therefore, submits that case against the petitioner requires further enquiry hence by granting this petition, the petitioner may be directed to be released on bail. In support of his contentions he placed his reliance on an un-reported order dated 03.10.2024 authored by one of us (Muhammad Saleem Jessar, J) Karachi vide Criminal Bail Application No. 1592 of 2024.

4. Syed Sardar Ali shah, Additional Prosecutor General Sindh and Agha Athar Hussain Pathan, Assistant Advocate General Sindh though opposed the petition on the ground that quantity of contraband shown to have been recovered from petitioner is not meager and cannot be

foisted easily by the ASI; however, on legal side both officers admit that Court below would not have entertained the bail application. The learned law officers submit the Court below did not bother to even refer the proper provision of law including enactment under his order; however, insist for refusal of bail. Learned Law Officers after going through Section 7 of the Act and its provisions submits that petitioner is not previously convict even no CRO has been made available to show any similar case pending against him, therefore, they have no objection for grant of bail. The learned Law officers further point out that challan of the case was submitted by Investigating officer on 19.09.2024 which is still pending adjudication before the trial Court.

5. 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.

6. No doubt, the petitioner has been nominated in the FIR, and 2460 grams of Charas is shown to have been recovered from his possession. However, the punishment provided by law for the said offence is the imprisonment which may extend to fourteen years but it shall not be less than nine years. As per the settled principle, when a statute provides two sets of punishment, the lesser one is to be considered at the bail stage. Hence, the alleged offence does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C, thus making bail the rule and jail the exception. It is also a settled principle of law that every accused is presumed to be innocent unless proven guilty, and the law cannot be stretched in favour of the prosecution, particularly at the bail stage.

7. Furthermore, although the alleged recovery is of 2460 grams of Charas, the surrounding circumstances create substantial doubt. The FIR and recovery was allegedly effected by a ASI, who, under the relevant statutory framework, lacks the requisite authority to conduct such operations. The non-association of private mashirs in such circumstances undermines the credibility of the prosecution case. Additionally, no video recording or photographic evidence of the recovery proceedings has been placed on record, despite the availability of technology and the statutory expectation of transparency under such circumstances. Reliance is placed on the cases of **Muhammad Abid Hussain v. The State** (2025 SCMR 721) and **Zahid Sarfaraz Gill v. The State** (2024 SCMR 934). It is a well-entrenched principle that in cases hinging solely on police testimony, the benefit of doubt must be afforded to the accused, even at the bail stage. Reliance is placed on the case of **Muhammad Arshad v. The State** (2022 SCMR 1555).

8. In the circumstances and in view of above legal as well as factual position of record the petitioner has successfully made out a good *prima facie* case for grant of bail. The case of petitioner is purely covered by Section 497(2) Cr.P.C. Accordingly, instant Petition was **allowed** by our short order dated 08.07.2025, whereby the petitioner **Asadullah Dayo** was ordered to be released on bail subject to his furnishing solvent surety in the sum of **Rs.50,000/- (Fifty Thousand)** and P.R bond in the like amount to the satisfaction of the trial Court. These are the reasons in support of our above short order.

9. Needless to mention here that the observations recorded hereinabove are tentative in nature and shall not, in any manner, prejudice or influence the trial Court during the adjudication of the case

JUDGE

JUDGE

Ahmad/P.S