

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Constitution Petition No.D-993 of 2025

Before:

Mr. Justice Yousuf Ali Sayeed;

Mr. Justice Abdul Hamid Bhurgri.

Petitioner : Ghulam Hyder son of Allah Bachayo Mirjat,
through Mr. Ali Asghar Leghari, Advocate.

Respondents : The State,
through Mr. Irfan Ali Talpur,
Deputy Prosecutor General Sindh.
Mr. Muhammad Ismail Bhutto, Additional
Advocate General Sindh,

Date of Hearing: 21.07.2025.

Date of Order. 21.07.2025.

ORDER

Abdul Hamid Bhurgri, J.- Through this petition, the petitioner seeks post-arrest bail in view of the embargo contained in Section 35(1) of the Sindh Control of Narcotic Substances Act, 2024. Reference is made to the judgment dated 22.04.2025, passed by a three-member bench of this Court in Constitutional Petition No. D-937 of 2025. The petitioner is accused in FIR No. 78 of 2025, lodged at Police Station B-Section, District Tando Muhammad Khan, wherein he is alleged to have been apprehended on the spot with a recovery of 6000 grams of Bhang (Hemp) from his possession.

2. It is alleged in the FIR that on 22.05.2025 vide entry No.22 complainant together with his staff left PS for patrolling and when they reached near Channel Mori link road, they saw a person having white bag, who seeing the police party tried to elude but was apprehended at 2115 hours along with bag. On inquiry, accused disclosed his name as Ghulam Hyder. Recovered bag was opened and Bhang (Hemp) was found in it, which was weighed to be 6000 grams. After sealing of the property and preparation of memo of arrest and recovery, the complainant shifted accused and property at PS, where lodged instant FIR.

3. Learned counsel for the petitioner submits that the FIR is false and has been registered with malafide intend and the contraband material has been foisted upon the petitioner. He further argued that identification of the petitioner in the headlight of vehicle is weak type of evidence. According to

him, the petitioner was stopped during snap checking by the complainant and having no CNIC huge amount of gratification was demanded by the police party and on failure to pay such bribe, the petitioner was booked in this false case. He claimed no independent witnesses were cited, despite the area being densely populated. The petitioner, belonging to a respectable family and lacking prior criminal record, hence sought bail.

4. On the other hand, the learned Deputy Prosecutor General has opposed the grant of bail to the petitioner by submitting that the name of the petitioner transpires in the FIR and contraband material was recovered from his exclusive possession; that the counsel for the petitioner has failed to demonstrate the existence of any enmity between the petitioner and the police officials, thereby negating any motive for the police to falsely implicate the petitioner in the present case. He prayed for dismissal of the petition for post arrest bail.

5. We have heard the learned counsel for the petitioner as well as the learned Deputy Prosecutor General Sindh and have perused the material available on record.

6. The alleged offence of recovery 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. Consequently, the purported recovery from the petitioner does not fall within the ambit of an offence of a "prohibited degree", thereby rendering bail the norm and incarceration the exception.

7. Furthermore, the alleged recovery is stated to have taken place in a densely populated locality; nonetheless, the police failed to associate any neutral or independent witnesses at the relevant time. It is a cardinal principle of criminal jurisprudence that where the prosecution's case is premised exclusively upon official testimony, devoid of corroboration from impartial and independent witnesses, the benefit of doubt must necessarily accrue to the accused. In this regard, reliance is placed upon the precedent laid down in ***Muhammad Arshad v. The State (2022 SCMR 1555)***. Additionally, the petitioner has no prior criminal antecedents and, therefore, cannot be categorized as a habitual offender.

8. Prima facie, the accusations against the petitioner warrant further inquiry. While official witnesses may be accorded the same evidentiary

value as private witnesses, the veracity of their statements must nonetheless be subjected to scrutiny during trial.

9. It is in view of the foregoing considerations that the petition was allowed vide a short order dated 21.07.2025 and the petitioner/accused was admitted to post-arrest bail subject to his furnishing a solvent surety in the sum of Rs.50,000/- and an equivalent P.R. bond to the satisfaction of the learned trial Court.

10. It is clarified that the observations recorded hereinabove are merely tentative and shall not prejudice the learned trial Court in adjudicating the case on its merits. The petitioner shall ensure his punctual attendance on each and every date of hearing, failing which the trial Court shall be at liberty to recall the concession of bail.

Judge

Judge