

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

Constitution Petition No.D-776 of 2025

**Before:**

***Mr. Justice Yousuf Ali Sayeed;***

***Mr. Justice Abdul Hamid Bhurgri.***

Petitioners : 1. Azhar Ali son of Ali Muhammad Jatoi,  
2. Qadir Khan son of Nabi Bux Jatoi,  
through Mr. Farhad Ali Abro, Advocate.

Respondents : The State and another,  
through Mr. Siraj Ahmed Bijarani,  
Assistant Prosecutor General Sindh.  
Mr. Muhammad Ismail Bhutto, Additional  
Advocate General Sindh,

***Date of Hearing:*** 28.07.2025.

***Date of Order.*** 28.07.2025.

### **ORDER**

**Abdul Hamid Bhurgri, J.**- Both the aforementioned petitioners have sought their post arrest bail by filing this Constitution Petition Under Article 199 of the Constitution 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 petitioners are accused in FIR No. 68 of 2025, lodged at Police Station Pinyari, District Hyderabad.

2. According to the prosecution's case, on 06.05.2025, the complainant ASI Gul Hassan, accompanied by his team comprising HC Zulfiqar Ali, PC Dildar Hussain, PC Dost Ali, PC Amjad Hussain, and DPC Abdul Majeed, departed the police station for patrol under Entry No. 41 at 0515 hours in an official vehicle. While patrolling various localities, they reached Liaquat Bridge, where the complainant allegedly received intelligence indicating that three individuals were selling charas in village Adho Khan Jatoi near the bank of the Pinyari Canal. The police proceeded to the location and, at approximately 0600 hours, observed three individuals carrying black plastic shoppers. Upon sighting the police party, the suspects attempted to flee; however, two were apprehended along with their shoppers, while the third escaped after discarding his shopper. The escapee accused was already known to be Sajjad alias Dad. One of the apprehended individuals disclosed his name as Azhar Ali. The shopper recovered from him was found to contain two slabs and a small piece of charas, collectively weighing 1080 grams. A search of his person yielded two currency notes

of Rs.100/- each. The second apprehended individual identified himself as Qadeer Khan. His shopper similarly contained two slabs and a small piece of charas, with a total weight of 1065 grams. A body search led to the recovery of a Rs. 100/- currency note. It is further alleged that the discarded shopper of the absconding accused was retrieved and found to contain two slabs and a small piece of charas, weighing 1150 grams. The seized material was sealed separately, and after preparing the necessary documentation, custody of the accused and the recovered property was returned to the police station, where the present FIR was registered.

3. The learned counsel for the petitioners contends that the FIR is fabricated and has been registered with malafide intent. He asserted that no contraband was recovered from the petitioners and that they were not arrested from the scene, alleging instead that the police concocted a false narrative. It was further argued that no independent witnesses were associated, despite the incident occurring in a densely populated area. The petitioners, it was submitted, hail from respectable families and have no prior criminal record; accordingly, they seek the grant of bail.

4. On the other hand, the learned Assistant Prosecutor General has opposed the petitioners' plea for bail, submitting that both individuals are nominated in the FIR, and a considerable quantity of contraband was recovered from each of them. Accordingly, at this stage, they are not entitled to the concession of bail.

5. We have heard the learned counsel representing the petitioners, as well as the learned Assistant Prosecutor General, Sindh, and have examined the material available on the record.

6. The alleged offence of recovery is punishable with imprisonment which may extend to fourteen years, but shall not be less than nine years. It is, however, a settled principle that at the bail stage, the lesser prescribed sentence is to be considered.

7. Moreover, the alleged recovery is reported to have occurred in a densely populated area, and the police party was allegedly in possession of prior intelligence regarding the petitioners' possession of contraband material. Nevertheless, the police failed to associate any neutral or independent witness at the time of the alleged recovery. It is a foundational principle of criminal law that when the prosecution's case rests solely upon

official testimony and lacks corroboration from impartial and independent witnesses, the benefit of the doubt must necessarily go to the accused. In this context, reliance is placed upon the precedent set in ***Muhammad Arshad v. The State (2022 SCMR 1555)***. Additionally, the petitioners do not have any prior criminal record and therefore cannot be classified as habitual offenders.

8. Prima facie, the allegations against the petitioners require further inquiry. While the testimony of official witnesses may carry the same evidentiary weight as that of private witnesses, their credibility must still be subjected to rigorous scrutiny during trial.

9. It is in view of the foregoing considerations that the petition was allowed vide a short order dated 28.07.2025 and the petitioners/accused were admitted to post-arrest bail subject to their furnishing a solvent surety in the sum of Rs.1,00,000/- each with 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 petitioners shall ensure their 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