

# HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 666 of 2025

(*Allahyar Dashti v. The State*)

Present:

**Mr. Arbab Ali Hakro, J.**

**Mr. Abdul Hamid Bhurgri, J.**

Date of hearing : **03.06.2025**

Date of decision : **03.06.2025**

Mr. Muhammad Shakir Khan, Advocate for petitioner.

Mr. Aftab Ahmed Shar, Additional Prosecutor General.

## **ORDER**

**Arbab Ali Hakro, J.** – Through this Constitution Petition, petitioner Allahyar son of Mitho Dashti seeks his release on post-arrest bail in Crime No.46 of 2025, registered at Police Station Khambra, District Ghotki, for an offence under Section 9(1), Serial No.3(a) of the Sindh Control of Narcotic Substances Act, 2024 (“**Act of 2024**”).

2. According to the FIR lodged by HC Abdul Rasheed Bharo of Police Station Khambra, on 06.05.2025 at 0730 hours, the petitioner was apprehended near village Ahmed Chohan, closed to the CPEC bridge. It is alleged that the police received spy information that the petitioner was involved in selling charas at the pointed place. Upon reaching the site at 0600 hours, the police party spotted the petitioner standing on the bridge who attempted to flee but was tactfully arrested. In absence of any private *mashirs*, police officials PC Zawar Hussain Rind and PC Tanveer Ahmed Charan were appointed as *mashirs*. During personal search, one slab of charas weighing approximately 300 grams was recovered from the petitioner’s possession. Out of which, 110 grams were separately sealed for chemical analysis and the remaining 190 grams were also sealed. Such FIR was registered accordingly.

3. Learned counsel for the petitioner argued that the petitioner is innocent and has been falsely implicated by the police to display their efficiency. The FIR was lodged after an inordinate delay of about one hour and thirty minutes, despite the short distance between the place of arrest and police station (about 4 kilometers), which raises serious doubts about the prosecution’s story. It was further argued that all witnesses are police officials subordinate to the complainant and thus interested parties. The complainant failed to associate any independent or private witnesses as required under Section 103 Cr.P.C., despite the offence allegedly

occurring in a busy, densely populated area. Moreover, there is no independent corroboration, and the prosecution story appears concocted and doubtful, meriting further inquiry.

4. Learned Additional Prosecutor General opposed the bail application, contending that the recovery of narcotics from the petitioner's possession and prompt registration of the FIR provide sufficient *prima facie* evidence to connect the petitioner with the alleged offence.

5. Having heard the learned counsel for the petitioner and learned Additional Prosecutor General, and after careful scrutiny of the record, the matter is considered in the light of settled legal principles.

6. It is undisputed that the Sindh Control of Narcotic Substances Act, 2024, has superseded the Federal Control of Narcotic Substances Act, 1997, within Sindh. Section 35(1) of the Act bars the application of Sections 496 and 497 Cr.P.C., effectively ousting the jurisdiction of subordinate courts to entertain bail applications in narcotics cases.

7. However, under Articles 9, 10-A, and 14 of the Constitution, the High Court retains jurisdiction under Article 199(1)(c) to entertain post-arrest bail petitions despite the ouster clause in the Act of 2024. Reliance is placed on the authoritative judgment of the Supreme Court of Pakistan in the case of **Khan Asfandiyar Wali**<sup>1</sup>, which held that constitutional jurisdiction cannot be ousted by statutory clauses when fundamental rights are at stake.

8. The Supreme Court of Pakistan, in the case of **Muhammad Abid Hussain**<sup>2</sup>, recently reaffirmed the importance of procedural fairness and modern investigative techniques. The absence of video evidence and independent witnesses in the recovery process casts serious doubt on the prosecution's case. Furthermore, the Apex Court emphasized protection against arbitrary detention as a fundamental right and held that bail cannot be denied merely because the offence carries severe punishment.

9. In the instant case, while the quantity of recovered charas stands at 300 grams, the circumstances of recovery raise substantive doubts. The recovery was effected by police officials without the presence of independent *mashirs*, in violation of procedural safeguards under Section 103 Cr.P.C. The FIR was lodged with a significant delay, and the witnesses are all police personnel connected to the complainant, undermining the credibility of the prosecution. These factors collectively indicate *mala fide* and suggest the case requires further inquiry.

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<sup>1</sup> Khan Asfandiyar Wali v. Federation of Pakistan (PLD 2001 SC 607)

<sup>2</sup> Muhammad Abid Hussain v. The State (2025 SCMR 721)

10. It is also observed that only 110 grams of the total 300 grams were separately sealed for analysis, with the handling of the remaining quantity insufficiently documented, raising concerns about the chain of custody and evidentiary integrity. This issue, combined with procedural irregularities and the questionable circumstances of arrest and recovery, further supports the petitioner's plea for bail. The settled legal principle is that when the prosecution's evidence rests solely on police testimony without independent corroboration in narcotics cases, the benefit of doubt should be extended to the accused even at the bail stage.

11. Accordingly, this petition is **allowed**. Petitioner Allahyar son of Mitho Dashti is admitted to post-arrest bail in Crime No.46 of 2025, registered at Police Station Khambra, District Ghotki, under Section 9(1), Serial No.3(a) of the Act of 2024, subject to furnishing a solvent surety in the sum of Rs.100,000/- (Rupees one lac) and a P.R. bond of the like amount to the satisfaction of the learned trial Court.

12. Needless to state, the observations recorded herein are tentative in nature and shall not, in any manner, prejudice or influence the trial Court during the adjudication of the case.

Above are the reasons of our short order dated 03.06.2025.

**J U D G E**

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Abdul Basit