

HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 704 of 2025

(*Moula Bakhsh Golo 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. Shabbir Ali Bozdar, Advocate for petitioner.

Mr. Aftab Ahmed Shar, Additional Prosecutor General.

ORDER

Arbab Ali Hakro, J. – Through this Constitution Petition, petitioner Moula Bakhsh son of Gul Muhammad Golo seeks his release on post-arrest bail in Crime No.71 of 2025, registered at Police Station Daharki, 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 contents of the FIR, the allegation against the petitioner is that on 04.05.2025 at 2000 hours, he was apprehended by a police party led by ASI Abdul Hafeez Laghari of Police Station Daharki while standing beside NHW Road near Naokot Bus Stop. It is alleged that the petitioner attempted to flee and was intercepted, and that he was found in possession of 250 grams of charas, out of which 100 grams were separately sealed for chemical analysis. The recovery was conducted without the presence of any private witnesses, and the seizure memo (*mashirnama*) was executed by two police officials accompanying the complainant.

3. Learned counsel for the petitioner contended that the petitioner is above 60 years of age and has no prior criminal record. It was argued that he has been falsely implicated due to local political rivalry and that the recovery is implausible, uncorroborated and procedurally defective. He emphasized that the recovery took place at a public location, yet no private witness was associated as *mashir*, in violation of Section 103 Cr.P.C. Furthermore, the complainant, being an ASI, was

not legally authorized under the Act of 2024 to conduct the search, seizure and arrest, thereby violating Section 21 of the Act.

4. It was also argued that despite the availability of modern investigative tools, the recovery was neither video-recorded nor photographed, contrary to the express dicta laid down by the Hon'ble Supreme Court in multiple precedents, where the Apex Court stressed the use of modern technology under Article 164 of the Qanun-e-Shahadat Order, 1984. In light of these glaring irregularities, the learned counsel submitted that the case merits further inquiry within the meaning of Section 497(2) Cr.P.C.

5. Learned Additional Prosecutor General, conversely, opposed the petition and submitted that the recovery of narcotics was effected lawfully, and that the material collected during investigation connects the petitioner with the offence.

6. Heard the arguments and perused the available record.

7. It is by now settled law that under the Act of 2024, jurisdiction of subordinate courts to entertain bail applications in narcotics cases stands barred by Section 35(1). Nonetheless, this Court retains constitutional jurisdiction under Article 199(1)(c) of the Constitution to entertain bail petitions in cases where fundamental rights, including liberty under Article 9, are at stake. The principle laid down by the Hon'ble Supreme Court in the case of **Khan Asfandyar Wali**¹ governs the field and affirms that statutory ouster clauses cannot override the constitutional jurisdiction of the High Courts.

8. Reliance is also placed on the recent judgment in the case of **Muhammad Abid Hussain**², wherein the Apex Court has reaffirmed that failure to associate independent witnesses, non-use of video recording, and procedural lapses seriously undermine the prosecution's credibility and warrant bail, even in narcotics cases, if the facts so demand.

9. In the present case, the recovery of 250 grams of charas does not fall within the prohibitory clause. The complainant was an ASI, not competent to conduct such recovery under the Act of 2024. No private *mashir* was associated; the entire prosecution case hinges upon police officials only. There is no video or

¹ Khan Asfandyar Wali v. Federation of Pakistan (PLD 2001 SC 607)

² Muhammad Abid Hussain v. The State (2025 SCMR 721)

photographic evidence, despite the alleged recovery taking place in a public area. The lack of evidentiary safeguards, procedural irregularities, and alleged *mala fide* motives render the case one of further inquiry, at this preliminary stage.

10. Moreover, 100 grams were sealed for chemical analysis, while 150 grams were sealed separately, yet the case is silent on the chain of custody and specifics of sealing, raising concerns regarding evidentiary integrity. These aspects will be adjudicated at trial but are relevant for present purposes. It is a trite principle that where the prosecution case is founded solely on police testimony, unsupported by independent corroboration, and serious doubts arise regarding legality of the recovery, the benefit must go to the accused, even at the bail stage.

11. Accordingly, the instant petition is **allowed**. Petitioner Moula Bakhsh son of Gul Muhammad Golo is admitted to post-arrest bail in Crime No.71 of 2025, registered at Police Station Daharki, District Ghotki, under Section 9(1), Serial No.3(a) of the Act of 2024, subject to his furnishing a solvent surety in the sum of Rs.100,000/- (Rupees one lac) and a P.R bond in the like amount, to the satisfaction of the trial Court.

12. Needless to state, the observations made hereinabove are tentative in nature and shall not influence the trial Court during adjudication.

Above are the reasons of our short order dated 03.06.2025.

J U D G E

J U D G E

Abdul Basit