

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No.D-716 of 2025

Before:

Mr. Justice Arbab Ali Hakro;

Mr. Justice Abdul Hamid Bhurgri.

Petitioner : Mst. Hakimzadi w/o Shaman Bozdar,
through Mr. Muhammad Ali Dayo,
Advocate.

Respondents : Province of Sindh and another,
through Mr. Aftab Ahmed Shar,
Additional Prosecutor General Sindh.

Date of Hearing: 05.06.2025.

Date of Order. 05.06.2025.

ORDER

Abdul Hamid Bhurgri, J.- Through this Constitution Petition, the petitioner seeks post arrest bail in crime No.94/2025 for offence punishable Under Section 9(1)-3(a) of the Sindh Control of Narcotic Substances, Act, 2024 (hereinafter it will be referred as Act, 2024) of PS Mirpur Mathelo.

2. Although bail matters are ordinarily to be agitated before the courts of competent criminal jurisdiction, the constitutional petition in the present case is maintainable in view of the statutory bar imposed by Section 35(1) of the Act, 2024, which categorically prohibits the grant of bail in narcotics offences. This legislative embargo effectively precludes the petitioner from availing relief through the ordinary forum, thereby creating a legal vacuum. In such circumstances, where no efficacious alternate remedy is available and the fundamental right to liberty under Article 9 of the Constitution stands implicated, recourse to the constitutional jurisdiction of this Court under Article 199 becomes both justified and necessary. The superior courts have consistently held that when statutory provisions render regular remedies illusory or ineffective, particularly in matters involving personal liberty, the constitutional jurisdiction can be invoked to prevent miscarriage of justice. For the sake of clarity and convenience, the text of section 35(1) of the Act, 2024 is reproduced below:-

“Notwithstanding anything contained in section 496 and 497 of the Code, the bail shall not be granted to an accused person charged with an offence under this Act”.

3. Therefore, in view of the exceptional nature of the statutory restriction and the absence of any effective legal remedy, this petition is held to be maintainable. Reliance is placed on the judgment of the Honourable Supreme Court in case of ***Khan Asfandiyar Wali v. Federation of Pakistan (PLD 2001 SC 607)***.

4. The case advanced by the prosecution is that on 12.05.2025, HC Muhammad Malook Lund lodged an FIR at PS Mirpur Mathelo on behalf of the State, alleging that on the said date at approximately 0900 hours, he, along with PC Abdul Kareem, PC Abdul Rasheed, and DPC Altaf Hussain, had departed for routine patrolling duties as recorded in roznamcha entry No.8. While patrolling within the jurisdiction, the police party reached Bozdar Colony, where they allegedly observed the petitioner, Mst. Hakimzadi wife of Shaman Bozdar, in possession of a shopper bag, purportedly engaged in the sale of charas outside her residence. Upon sighting the law enforcement officers, the petitioner allegedly attempted to flee into her house but was intercepted and apprehended along with the shopper. It is further stated in the FIR that, due to the unavailability of private witnesses, PC Abdul Kareem and PC Abdul Rasheed were appointed as mashirs. Upon inquiry, the accused disclosed her identity as Mst. Hakimzadi. The shopper was opened in the presence of the mashirs and was allegedly found to contain charas weighing 280 grams in the form of pieces. Out of the recovered contraband, 80 grams were sealed for chemical analysis, while the remaining quantity was sealed separately. The complainant prepared the mashirnama of arrest and recovery in the presence of the aforementioned mashirs, who endorsed the same with their signatures. The accused, along with the recovered substance, was thereafter brought to the police station, where the instant FIR was registered.

5. The learned counsel for the petitioner argued that the petitioner has been falsely implicated in the case by the police owing to pre existing enmity, the FIR is delayed by an hour despite the PS is situated at 2 or 3 furlongs. He further contended that the petitioner was not present at the scene of the alleged offence and that her implication stems from a

vendetta harboured by the local police. The narrative presented by the prosecution is inherently implausible, no purchaser was identified despite the alleged sell of contraband. Moreover, no independent witness from the locality was cited as mashir, notwithstanding the area was density populated, in breach of section 103 Cr.P.C. Counsel also highlighted that the mandatory video recording required under section 17(2) of the Act, 2024 was not conducted. All the prosecution witnesses were stated to be police personnel, and that their testimony remained uncorroborated. The learned counsel contended that the petitioner has no criminal history, that the offence does not fall within the prohibitory clause and that in bail matters, the degree of punishment must be relevant consideration. The complainant's competency to lodge the FIR under the Act, 2024 was also challenged. The counsel therefore sought bail on the grounds of malafides, lack of evidence and case of further inquiry.

6. Conversely, learned Additional Prosecutor General Sindh, opposed the petitioner contending that the petitioner was apprehended in the act of possessing charas and the recovery was affected strictly in accordance with requisite legal and procedural norms, absence of private mashirs is not fatal to the case of prosecution. He further submitted that in such cases public has always reluctant to become witness and avoid to associate themselves in narcotics cases. Allegation of enmity were termed speculative and devoid of substance. Regarding video recording under section 17(2) of the Act, 2024, he submitted that in absence of video recording the case of prosecution does not fail. In the end he contended that the petitioner has not made the case warranting grant of bail as such the petition is liable to be dismissed.

7. We have heard the counsel for the parties and have perused the material.

8. The record discloses that alleged recovery from the petitioner amounted to 280 grams of charas falling within Section 9(1)-3(a) of the Act, 2024, the prescribed sentence for this quantity does not attract the prohibitory clause of section 497(1) Cr.P.C making bail the rule and incarceration the exception.

9. The circumstances surrounding the alleged recovery notably the absence of private witnesses render the case one meriting further inquiry within the scope of 497(2) Cr.P.C.

10. The Honourable apex Court in the case of ***Muhammad Abid Hussain v. the State (2025 SCMR 721)*** has emphasized the indefensible nature of procedural fairness and technical evidence in narcotics cases. It was held that the absence of video footage and independent witness seriously compromise the case of prosecution. Furthermore, in the case of ***Zahid Sarfaraz Gill v. the State (2024 SCMR 934)***, the Honourable Apex Court has emphasized on video recording in narcotic cases.

11. In the present case, the recovery of 280 grams of charas is alleged but the circumstances surrounding the seizure creates reasonable doubt, the recovery was conducted by a Head Constable, who under the Act, 2024 lacked legal competence in such operations. No independent witness was cited, thus breaching established procedure safeguards. It is now well settled principle that where the prosecution's case hinges entirely on police testimony, uncorroborated by natural witnesses, the benefit of doubt is to be extended at the bail stage. Reliance is placed on the case of ***Muhammad Arshad v. The State (2022 SCMR 1555)***.

12. In view of the above facts and legal position, this court is of the view that the case requires further investigation. Accordingly, the petition is allowed and the petitioner is admitted to post arrest bail subject to furnishing solvent surety in the sum of Rs.50,000/- with a P.R bond in the like amount to the satisfaction of learned Additional Registrar of this court.

13. Needless to state, the observations hereinabove are tentative in nature and shall not prejudice the trial court in his adjudication of the matter on merits.

14. Above are the reasons of our short order of even date.

Judge

Judge