

# IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No.D-675 of 2025

**Before:**

*Mr. Justice Arbab Ali Hakro;  
Mr. Justice Abdul Hamid Bhurgri.*

Petitioner : Abid Ali son of Ali Gulab Shar,  
through Mr. Samiullah Khan Rind,  
Advocate.

Respondent : The State,  
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**,- The petitioner, who is an accused in a case, crime No.47/2025 of PS Kotdiji, district Khairpur for offence punishable Under Section 9(b) CNS Act, the Sindh Control of Narcotic Substances, Act, 2024 (hereinafter it will be referred as Act, 2024).

**2.** Although Section 35(1) of the Act, 2024 bars the grant of bail through ordinary forums, such statutory prohibition cannot override the constitutional jurisdiction of this Court under Article 199. Where no efficacious remedy is available and the fundamental right to liberty is at stake, the High Court is empowered to grant relief in exceptional circumstances. For the sake of convenience section 35(1) of the Act, 2024 is reproduced as under:-

*“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.** It is well established that the right to liberty is a fundamental right, guaranteed Under Articles 9 and 14 of the Constitution, where such liberty is curtailed by operation of statutory bar, regardless of the individual merits of the case, the High Court’s Constitutional jurisdiction remains available to ensure that the mandate of the Constitution is not defeated by the procedural rigidity. The Constitutional Jurisdiction thus serves as a check against potential miscarriage of justice where no efficacious remedy is

available. In such exceptional circumstances, where statutory forums are rendered ineffective by operation of law, the Constitution 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 & others (PLD 2001 Supreme Court 607)***.

4. According to the contents of the First Information Report, it is alleged that on 12.04.2025 at approximately 1600 hours, the complainant, ASI Nizakat Ali Wasan, accompanied by his subordinate police officials namely PC Ghulam Rasool, PC Ashraf Ali, PC Abdul Jabbar, PC Barkat Ali, and DPC Amjad Ali departed from the Police Station for routine patrolling, as per entry No.12 of the relevant roznamcha. Upon patrolling various locales, the police party arrived near an open plot situated along the link road of village Faisal Mahar, whereupon the complainant purportedly received actionable intelligence from an undisclosed informant regarding the presence of five individuals engaged in the sale of Heroin and Bhang within the otaq of one Taj Muhammad, also known as Haji Mahar. Acting upon the said intelligence, the police party proceeded forthwith to the designated location and arrived there at by 1700 hours. It is averred that, upon arrival, the police observed and identified five suspects namely, Taj Muhammad alias Haji Mahar, Mashooq, Shadu alias Shahdad, Abid Ali (petitioner), and Pervez sitting together, with shoppers containing suspected narcotics lying in their immediate vicinity. On being confronted, the suspects attempted to flee; however, two individuals were apprehended on the spot, whilst the remaining three succeeded in evading arrest. The complainant further asserts that, in the absence of private mashirs, PCs Ghulam Rasool and Jabbar Ali were nominated to act as official mashirs for the purpose of recovery. Upon inquiry, one of the apprehended individuals disclosed his identity as Abid Ali (petitioner). A green-coloured plastic shopper allegedly recovered from his possession was opened and found to contain a quantity of Bhang, which upon weighing amounted to 1100 grams. The second apprehended person, identifying himself as Pervez, was found in possession of another green shopper, which, upon inspection, was found to contain 45 paper puryoon of Heroin, collectively weighing 17 grams. Both sets of contraband were duly sealed in separate parcels. It is further alleged that the complainant

also recovered narcotic substances purportedly left behind by the absconding co-accused. A green shopper attributed to Taj Muhammad alias Haji was said to contain 1050 grams of Bhang; a black shopper left by Shado alias Shahdad contained 1200 grams of Bhang; and a white shopper allegedly belonging to Mashooq likewise yielded 1200 grams of Bhang. Each parcel of recovered contraband was individually sealed in accordance with procedure. The arrest and recovery proceedings were documented through a mashirnama prepared in the presence of the designated mashirs. Thereafter, both the apprehended accused along with the seized narcotics were brought to the Police Station, where a formal First Information Report was registered.

5. Learned counsel for the petitioner submitted that the petitioner had been falsely implicated by the police. He further submitted that there is no criminal case against the applicant. He also submitted that the alleged offence does not fall within the prohibitory clause as the alleged recovery from accused is 1100 grams hemp (bhang), petitioner is no more required to police for further investigation. He also argued that neither video was recorded nor photos were captured by the complainant during alleged recovery process. Learned counsel urged that the case merited further inquiry within the meaning of Section 497(2) Cr.P.C and prayed for grant of bail.

6. Conversely, Mr. Aftab Ahmed Shar, the learned Additional Prosecutor General Sindh, opposed the bail petition, contending that applicant was apprehended at spot; his name is transpired in the FIR and he prayed for dismissal of the petition.

7. We have heard learned counsel for the parties and examined the record with circumspection.

8. The applicant/petitioner Abid Ali seeks post-arrest bail in a case registered under the Sindh Control of Narcotics Substances Act, 2024, involving alleged recovery of 1100 grams of Bhang. The recovered quantity does not fall within the definition of commercial quantity under the Act, and as such, the offence does not attract the prohibitory clause of Section 497(1) Cr.P.C. It is a settled principle that in cases not falling

within the prohibitory clause, bail is to be granted as a rule unless exceptional circumstances exist. Furthermore, the FIR has been lodged by a police officer who, on the face of the record, lacks competence under the statutory framework of the Act, 2024, to initiate such proceedings-raising doubt on the legality of the prosecution. The record also shows that the raid was conducted at an otaq (premises) on prior information, yet no private person or mashir was associated with the recovery proceedings, despite the availability of time and opportunity, which affects the transparency of the alleged recovery. Significantly, although the raid was conducted in a fixed premises on prior intelligence, the police failed to make any video recording of the search and recovery as prescribed under Section 17(2) of the Act, 2024, which is a mandatory procedural safeguard designed to ensure accountability of law enforcement actions.

**9.** The Honourable Supreme Court in ***Muhammad Abid Hussain v. The State (2025 SCMR 721)*** has unequivocally held that absence of video evidence and non-association of independent witnesses in narcotics recoveries raises serious doubts upon the integrity of the prosecution case. In ***Zahid Sarfaraz Gill v. The State (2024 SCMR 934)***, the Apex Court observed:

*“6. In narcotic cases the prosecution witnesses usually are ANF personnel or policemen who surely would have a cell phone with an in-built camera. Personnel of those arrested with narcotic substances generally there are only a few witnesses, and most, if not all, are government servants. However, trials are unnecessarily delayed, and resultantly the accused seek bail first in the trial court which if not granted to them is then filed in the High Court and there too if it is declined, petitions seeking bail are then filed in this Court. If the police and ANF were to use their mobile phone cameras to record and/or take photographs of the search, seizure and arrest, it would be useful evidence to establish the presence of the accused at the crime scene, the possession by the accused of the narcotic substances, the search and its seizure. It may also prevent false allegations being levelled against ANF/police that the narcotic substance was foisted upon them for some ulterior motives”.*

**10.** It is a well settled principle that in cases where the officials are witnesses despite of availability of private witnesses that the benefit of doubt must be afforded to the accused, even at the bail stage. Reliance is placed on the case of ***Muhammad Arshad v. The State. (2022 SCMR 1555)***.

**11.** While acknowledging the critical importance of addressing narcotics-related offences, equal vigilance must be exercised to uphold and protect the legal rights of accused individuals. In circumstances where procedural safeguards, such as video recording of recovery operations and the presence of impartial, independent witnesses, are not strictly observed, the evidentiary strength of the prosecution's case is weakened, thereby justifying favourable consideration for the petitioner.

**12.** It is fundamental and universal accepted principle within criminal jurisprudence that mistakenly granting interim bail to a guilty party can later be rectified through subsequent conviction and sentencing. Conversely, there is no remedy available for the irreparable harm suffered by an innocent person who endures unwarranted detention during any phase of criminal proceedings, even if ultimately acquitted. This guiding principles finds support in established judicial precedents.

**13.** In light of these circumstances, and based on tentative assessment, the case against the petitioner/applicant appears to be one of further inquiry within the meaning of Section 497(2) Cr.P.C. Accordingly, this petition is allowed, the petitioner/applicant is admitted to post-arrest bail, subject to furnishing solvent surety in the sum of Rs.50,000/- and a personal bond in the like amount to the satisfaction of learned Additional Registrar of this Court.

**14.** Needless to observe, the foregoing findings are tentative in nature and shall not prejudice the trial Court in determining the matter on merits.

**15.** Above are the reasons of our short order of even date.

Judge

Judge

ARBROHI