

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No.D-705 of 2025

Before:

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

Petitioner : Chakar son of Abdul Aziz Bozdar,
through Mr. Shabbir Ali Bozdar, Advocate.

Respondents : The State / 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 petition, the petitioner has prayed for grant of post arrest bail in the crime No.86/2025 for offence punishable Under Section 9(1) Sr. 3(a) of the Sindh Control of Narcotic Substances, Act, 2024 (hereinafter it will be referred as Act, 2024) of PS Mirpur Mathelo.

2. In view of the express bar contained in Section 35(1) of the Sindh Control of Narcotics Substances Act, 2024, the petitioner is left without any efficacious remedy before the ordinary criminal forums. Where a statutory prohibition effectively forecloses access to bail, the constitutional jurisdiction of this Court under Article 199 may be invoked to safeguard the petitioner's fundamental right to liberty, as enshrined in articles 9 and 14 of the Constitution. 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. 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. It is alleged in the FIR dated 04.05.2025, recorded under entry No.10 at 1400 hours, that the complainant, Head Constable Zafar Ali, accompanied by PC Noor Muhammad, PC Shoukat Ali, and DPC Abdul Ghaffar, departed the police station for routine patrolling duties. Upon reaching the thoroughfare extending from Soomra Colony to Bozdar Colony, the police party observed an individual approaching while holding a white plastic shopper. Upon sighting the police personnel, said individual purportedly attempted to evade apprehension but was promptly intercepted. Owing to the unavailability of private witnesses at the scene, the complainant duly appointed PCs Noor Muhammad and Shoukat Ali to act as official mashirs. Upon preliminary inquiry, the apprehended individual disclosed his identity as Chakar. A search of the white shopper in his possession resulted in the recovery of a substance identified as charas, which, upon weighing, was found to be 450 grams. Of the total quantity, 200 grams were duly sealed for chemical analysis, whilst the remaining 245 grams were separately secured. The complainant thereafter prepared the mashirnama of arrest and recovery in the presence of the appointed mashirs. The accused along with the recovered narcotic substance was then transported to the police station, whereupon the instant FIR was formally registered.

5. Learned counsel for the petitioner submitted that the petitioner had been falsely implicated by the police due to enmity. He further contended that there is no independent witness or mashir in this case cited by the police. Lastly he prayed for grant of bail stating that the case merits further inquiry within the meaning of Section 497(2) Cr.P.C.

6. Conversely, Mr. Aftab Ahmed Shar, the learned Additional Prosecutor General, opposed the petition and grant of bail on the ground that the petitioner is nominated in the FIR and that he was apprehended at spot and contraband material was recovered from his possession.

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

8. The record reflects that the alleged recovery from the petitioner amounted to 450 grams of charas, falling within the scope of Section 9(1)-3(a) of the Act, 2024. The prescribed sentence for such a quantity does not

exceed seven years, and therefore the offence does not attract the prohibitory clause of Section 497(1) Cr.P.C., thus making bail the rule and jail the exception. The surrounding circumstances raise serious doubts, the absence of private witnesses, contradictions in the prosecution version, and lack of corroborative evidence render the case fit for further inquiry under Section 497(2) Cr.P.C.

9. In the present case, although the alleged recovery is of 450 grams of charas, the surrounding circumstances create substantial doubt. The FIR and recovery was allegedly effected by a Head Constable, who, under the relevant statutory framework, lacks the requisite authority to conduct such operations. The non-association of private mashirs in such circumstances undermines the credibility of the prosecution case. Additionally, no video recording or photographic evidence of the recovery proceedings has been placed on record, despite the availability of technology and the statutory expectation of transparency under such circumstances. Reliance is placed on the cases of ***Muhammad Abid Hussain v. The State (2025 SCMR 721)*** and ***Zahid Sarfaraz Gill v. The State (2024 SCMR 934)***. It is a well-entrenched principle that in cases hinging solely on police testimony, 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)***.

10. Accordingly, in view of the totality of circumstances and the tentative evaluation of evidence, this Court is of the considered view that the matter warrants further investigation. The petition is therefore allowed, and the petitioner is admitted to post-arrest bail, subject to furnishing solvent surety in the sum of Rs.50,000/- with P.R bond in the like amount to the satisfaction of the Additional Registrar of this Court.

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

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

Judge

Judge