

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No.D-715 of 2025

Before:

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

Petitioner : Mst. Mirzadi w/o Ahmed Khan 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.- The petitioner through this Petition seeks post arrest bail in the crime No.95/2025 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. The Constitution is the supreme law of the land, and any statutory provision that attempts to oust the jurisdiction of the courts must be interpreted in a manner consistent with fundamental rights. Section 35(1) of the Act, 2024 imposes a restrictive bar on the grant of bail in narcotics offences. While legislative intent to deter drug-related crimes is acknowledged, such restriction cannot override or neutralize the constitutional guarantees enshrined in Articles 4, 9, and 10-A of the Constitution, particularly the right to liberty, fair trial, and due process. Where the statutory scheme effectively disables the ordinary courts from entertaining bail even in deserving cases, the High Court's constitutional jurisdiction under Article 199 must remain available as a forum of last resort. The superior judiciary has consistently held that where no other adequate or efficacious remedy exists and personal liberty is at stake, the High Court can examine the matter under its constitutional mandate. Hence, despite the bar contained in Section 35(1), this Court is competent to entertain the instant petition to safeguard constitutional rights against

rigid statutory interpretation. 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 Asfandyar Wali v. Federation of Pakistan (PLD 2001 SC 607)***.

4. As per the contents of the FIR lodged on 12.05.2025, the complainant, HC Zafar Ali, accompanied by his subordinate staff PC Shahbaz Ali, PC Noor Muhammad, and DPC Abdul Ghaffar departed from the police station at approximately 1530 hours for routine patrolling, as recorded in roznamcha entry No.14. Upon reaching Bozdar Colony, the police party purportedly observed a female individual in possession of a shopper bag, allegedly engaged in the sale of charas outside her residence. Upon sighting the police, she reportedly attempted to flee towards the interior of her house but was apprehended at approximately 1600 hours, along with the said shopper. The FIR further narrates that, due to the absence of private witnesses, PCs Shahbaz Ali and Noor Muhammad were appointed as mashirs. Upon preliminary inquiry, the woman disclosed her identity as Mst. Mirzadi. The shopper was opened in the presence of the mashirs and was found to contain charas weighing 310 grams in the form of pieces. From the recovered substance, 110 grams were sealed for chemical analysis, while the remainder was sealed separately. The complainant subsequently prepared the mashirnama of arrest and recovery in the presence of the said mashirs, who duly endorsed the document with their signatures. The accused, along with the seized contraband, was thereafter escorted to the police station, where the FIR was formally registered.

5. Learned counsel for the petitioner has argued that the alleged recovery from the petitioner is of a meagre quantity, which does not fall within the ambit of the prohibitory clause of Section 497(1) Cr.PC. It is

further submitted that the alleged recovery was made from densely populated area, yet no independent witness or mashir was cited by the prosecution which is the violation of section 103 Cr.P.C. The entire recovery proceedings are witnessed only by the police officials, raising serious doubts regarding the veracity of the recovery. No video recording or use of any modern technological device was made during the alleged recovery proceedings, which raises serious questions regarding the transparency of the recovery process. It is also contended that the police officer who lodged the FIR was not legally competent to register the same, as he was not authorized under the relevant statute to do so. Lastly, it is argued that in view of the above facts and circumstances, the case of the petitioner falls within the ambit of further inquiry as envisaged under Section 497(2) Cr.PC.

6. Conversely, learned Additional Prosecutor General Sindh opposes the grant of bail and contends that the name of the petitioner is transpired in the FIR with recovery of charas. He stated that there is embargo in Section 35(1) to grant bail as such petition is not maintainable. He also contended that the alleged offence is of a serious nature as it is against the society and the petitioner does not deserve any leniency at this stage.

7. We have heard the counsel for the parties and have given record to our anxious consideration.

8. The record discloses that alleged recovery from the petitioner amounted to 310 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 Court has emphasized on video recording in narcotic cases.

11. In the present case, the recovery of 310 grams of charas is alleged but the circumstances surrounding the seizure creates reasonable doubt, the FIR and recovery was conducted by a Head Constable, who under the Act, of 2024 lacked legal competence to conduct such operations (as per section 16,17 and 18 of the Act, 2024). No independent witness was cited despite of the fact that the recovery place is thickly populated area, 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 leaned 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

ARBROHI