

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANO

Const. Petition No. D- 647 of 2025

(Roshan Ali v. the State)

Date of hearing	Order with signature of Judge
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Before:
Mr. Justice Muhammad Saleem Jessar
Mr. Justice Riazat Ali Sahar

Petitioner: Roshan Ali s/o Allah Wadhayo Detho through Mr. Atta Hussain Qadri, Advocate.

The Respondents: The State through M/s Liaquat Ali Shar, Additional Advocate General Sindh, Mr. Ali Anwar Kandhro, Additional Prosecutor General, Sindh.

Date of Hearing: 17.07.2025.

Date of Decision: 17-07-2025

O R D E R

Muhammad Saleem Jessar, J- Through this order, we intend to dispose of captioned petition, wherein the petitioner is seeking his release on bail in Crime No.51 of 2025, registered against him at P.S, Lakhi Ghulam Shah, for the offence punishable under section 9(i), 3 (c) of Sindh Control of Narcotics Act 2024 (hereinafter referred to as “the Act”).

2. There exists no express provision regarding the grant of bail under the Act, as is evident from the language employed in Section 35, which reads as under:

35. No bail is to be granted in respect of certain offences- (1) Notwithstanding anything contained in sections 496 and 497 of the Code, the bail shall not be granted to an accused person charged with an offence under this Act.

However, as per the order dated 22.04.2025 passed by the Larger Bench of this Court at its Principal Seat in Constitutional Petition No.D937 of 2025, the Honourable Acting Chief Justice of Sindh, being the author of the judgment, was pleased to lay down that in view of the absence of any provision regarding the grant of bail under the Act, all matters pertaining to bail under the said Act shall fall exclusively within the domain of the Constitutional Bench of the High Court of Sindh for consideration under its constitutional jurisdiction.

3. Furthermore, in NAB Ordinance, 1999, the opportunity of bail was not provided by the Statute against the fundamental rights under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 and same was discussed by the Honourable Supreme Court of Pakistan in the case of **Khan Asfandiyar Wali v. Federation of Pakistan (PLD 2001 SC 607)**, the Honourable Supreme Court held that the petitions were maintainable under Article 184(3) of the Constitution as they raised issues of public importance relating to the enforcement of fundamental rights. The constitutionality of the NAB Ordinance, 1999 was challenged for violating several constitutional provisions, particularly Articles 4, 9, 10, 12, 18, 23, 24, 25, 175, 202, and 203. The Court found that the Ordinance created a parallel judicial system by assigning judicial powers to the executive, thus infringing upon the principle of separation of powers. Notably, Section 9(b) of the Ordinance, which ousted the jurisdiction of the High Courts to grant bail, was declared ultra vires to the Constitution, reaffirming that High Courts retain such jurisdiction under Article 199. The Court directed that Accountability Court Judges must be serving District and Sessions Judges under the supervisory control of the respective High Courts. It also clarified that the offence of "willful default" under Section 5(r) was a continuing one and not

retrospective, hence not violative of Article 12. While some provisions were struck down, the Supreme Court applied the doctrine of severability and recommended necessary amendments rather than invalidating the entire Ordinance. Additionally, various directions were issued to ensure judicial independence, due process, and accountability reforms. The affirmation of High Courts' powers under Article 199, including the authority to grant bail, is explicitly stated in paragraph (r), where the Court held that “Section 9(b) of the Ordinance to that extent is ultra vires the Constitution... The superior Courts under Article 199 of the Constitution remain available to their full extent...”

4. The facts of the prosecution case are that the complainant along with everyone HC Mukhtiar Ali, PC Ghulam Fareed left Police Station for patrolling, at about 0600 hours went Lakhi Ghulam Shah from Larkana towards main road near Railway Phatak No.2, when reached there and saw that one person from southern side carrying in his right hand black coloured shopper, who on seeing the police tried to escape away. Subsequently the police party followed the accused and arrested him on distance of 20/25 paces with shopper. The accused was apprehended and HC Mukhtiar Ali & PC Ghulam Fareed were appointed as mashirs. The accused disclosed his name as Roshan Ali. The police opened the black shopper which was secured from accused in which four pieces Charas was found which was weighed which became one kilo gram of Charas and the accused disclosed that he is selling the Charas. The accused was brought to the police station, where FIR was registered accordingly.

5. Learned counsel for petitioner argued there are no reasonable grounds to believe that the petitioner has committed the alleged offence; that the FIR has been lodged maliciously due to enmity with the police and the

story narrated therein is stereotypical, superficial, flawed and clumsily constructed, lacking coherence and not appealing to the ordinary sense of logic or common prudence; that no narcotics was recovered from the exclusive possession of the petitioner, the alleged arrest and recovery was staged at the police station and the FIR suffers from legal defects, particularly the absence of independent mashirs in a busy place, in violation of Section 103 Cr.P.C. Furthermore, the Counsel also stressed that no video recording was made as required under Section 17 (2) of the Act. He urged that all witnesses are police officials with vested interests, there was no corroborative evidence and that his implication is due to enmity. Learned counsel highlighted the petitioner clean antecedents, local residence, and willingness to cooperate, contending that bail should not be withheld as a form of punishment, especially since wrongful incarceration is irreparable if he is later acquitted. Hence, he seeks bail on the ground of further inquiry, mala fide, and lack of credible evidence.

6. Learned Additional Advocate General, Sindh and Additional Prosecutor General, Sindh opposed the bail, arguing that the petitioner was caught red-handed with Charas. The recovery was lawfully made, with all legal formalities duly observed, including proper documentation and dispatch for chemical analysis. The absence of private mashirs is explained by public reluctance in narcotics cases and the testimony of police officials cannot be discarded solely on that basis. Allegations of political victimization are termed baseless and unsubstantiated. The learned Addl. P. G contends that while video recording under Section 17(2) is desirable, its absence is not fatal to the prosecution case. Given the gravity of the offence, the quantity of narcotics recovered and the statutory presumption of guilt, the Petitioner has failed to establish grounds for further inquiry, and therefore, is not entitled to the concession of bail.

7. Heard learned counsel for the petitioner, learned Addl. P. G, learned Addl. A. G as well as perused the material available on record.

8. It becomes pertinent to observe that Section 35 of the Act comprises two distinct limbs. The first limb, which pertains to the exclusion of the grant of bail, in our considered view, appears to have been enacted with the intent of addressing the alarming rise in drug related offences within society. This legislative restriction seems designed as a deterrent, aimed at combating the growing menace of drug trafficking and curbing the spread of narcotic substances. Recent high-profile arrests—such as that of a young individual named Armaghan, which has garnered extensive media coverage— underscore the urgency and gravity of the drug crisis that necessitates such stringent measures. The second limb, encapsulated in subsection (2) of Section 35, stipulates that "the trial court shall conclude the trial within a period of six months." This provision reflects the legislature's intent to ensure that the Special Courts—yet to be established by the Provincial Government—proceed expeditiously with the adjudication of narcotics cases. The object is to safeguard the rights of the accused, particularly those who may have been falsely or maliciously implicated, by preventing prolonged incarceration without trial. Thus, while the first limb addresses deterrence and public safety, the second seeks to balance these aims with procedural fairness and timely access to justice.

9. The record reflects that the alleged recovery from the petitioner amounted to one kilogram of charas, falling within the scope of Section 9(1)-3(c) 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.

10. In the present case, although the alleged recovery is of one kilogram of Charas, the surrounding circumstances create substantial doubt. The FIR and recovery was allegedly effected by a ASI, 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)**.

11. In view of the foregoing analysis, it is manifest that the prosecution has failed to produce video or photographic evidence as mandated under Section 17(2) of the Act, which casts serious doubt upon the legality of the recovery and arrest. The absence of private mashirs, despite the alleged incident occurring in a public and accessible area and the lack of independent corroboration, further undermine the credibility of the prosecution's case. Prima facie, it appears that the material on record does not connect petitioner to the commission of offence. In the interest of justice, procedural fairness and to prevent potential abuse of prosecutorial powers,

we are of the considered view that the petitioner is entitled to the concession of bail. Accordingly, the petition is allowed. The petitioner, Roshan Ali son of Allah Wadhayo Detho is ordered to be released on bail upon furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand only) and a personal bond in the like amount to the satisfaction of learned trial court.

12. Needless to say, any observation made hereinabove is tentative in nature and shall not influence the outcome of the trial.

Judge

Judge

M Yousuf Panhwar/ **