

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
CP No. D-946 of 2025

(*Ali Nawaz v. The State*)

DATE: **ORDER WITH SIGNATURE(S) OF JUDGE(S)**

Before:

Mr. Justice Abdul Mobeen Lakho
Justice Ms. Sana Akram Minhas

Petitioner / Accused: Through, Mr. Mashooque Ali Mahar, Advocate

Respondent: Through, Mr. Muhammad Ismail Bhutto, Additional A.G Sindh
Ms. Safa Hisbani, Assistant Prosecutor General

Date of Hearing: 26-6-2025

Date of Decision: 26-6-2025

FIR No. 99 / 2025 dated 4.5.2025
U/s 9(1) Serial No.3(b), SCNSA, 2024
P.S. Sehwan, District Jamshoro
Alleged Narcotic Recovered: 520 grams of Charas

ORDER

1. **Sana Akram Minhas, J:** At the outset, it is to be noted that the Petitioner was arrested under the ***Sindh Control of Narcotics Substances Act, 2024*** (“**Act 2024**”). Section 35 of the Act places an explicit bar on the grant of bail and expressly excludes the application of Sections 496 and 497 of the *Code of Criminal Procedure, 1898*. Faced with this statutory embargo, the Petitioner has sought post-arrest bail by invoking this Court’s constitutional jurisdiction.
2. This Petition is placed before the present Constitutional Bench in compliance with the directions issued in the Order dated 22.4.2025, passed in CP No.D-937/2025 (*Syed Sahir Hasan v. Province of Sindh & Others*) by a Full Bench of this Court. The said Order makes it clear that despite the bar under the Act 2024, bail applications filed through constitutional petitions may still be entertained. Judicial backing for this principle is found in the Supreme Court’s ruling in **Khan Asfandyar Wali v. Federation of Pakistan (PLD 2001 SC 607)**, which reaffirms that a statutory bar on bail does not curtail the High Court’s jurisdiction under Article 199 of the *Constitution of Pakistan, 1973*.

3. Adverting to the present matter, the Petitioner stands nominated in FIR No.99/2025, registered at Police Station Sehwan, District Jamshoro, under Section 9(1), Serial No.3(b) of the Act 2024, in connection with the alleged recovery of 520 grams of charas. Following his arrest, he has sought post-arrest bail through this Petition.
4. Briefly stated, according to the prosecution's version set forth in the subject FIR, during a police patrol on 4.5.2025, at the time and place mentioned therein, the Petitioner was apprehended after he attempted to flee upon seeing the police, while holding a shopping bag. A search of the shopping bag led to the recovery of 520 grams of charas from the Petitioner's possession, which was seized and sealed on the spot.
5. The learned Counsel for the Petitioner contends that the Petitioner has been falsely implicated in the case by the police due to his refusal to pay illegal gratification demanded by them. It is submitted that no independent or private witness was present to witness the recovery or the arrest. It is further argued that, considering the prescribed sentence – where the minimum punishment is five (5) years' imprisonment and maximum is nine (9) years – the offence does not fall within the prohibitory clause of Section 497 Cr.PC, and that in such circumstances, bail is ordinarily granted.
6. On the other hand, both the learned APG and AAG have opposed the grant of bail. It was contended that, although the Petitioner has no prior criminal record, the FIR clearly attributes a specific role to him in the commission of the offence, stating that charas was recovered from his possession and was promptly seized and sealed at the scene. The chemical report too was positive and there was no delay in lodging the FIR.
7. We have heard the respective Counsel and have examined the record.
8. According to the FIR, 520 grams of charas was recovered from the Petitioner at the time of arrest and was allegedly secured by the police. As per submissions from both sides, pursuant to Serial No.3(b) of the TABLE the sentencing range for the offence is five (5) to nine (9) years imprisonment, along with a fine that may extend to Rs.100,000/-, which falls outside the prohibitory clause of Section 497 Cr.PC. Moreover, it remains unclear whether the recovered weight refers to the gross or net quantity. The recovered amount is marginally above the upper limit prescribed under Section 9(1), Serial No. 3(a) of the Act 2024 – which covers a range upto 499 grams and carries a sentencing range of ten (10) months to five (5) years of imprisonment. This also renders the Petitioner's case a borderline one between Serial Nos. 3(a) and 3(b), as the quantity recovered marginally exceeds the threshold of 499 grams – raising a legitimate point of discussion

and making the case for a further inquiry in determining the correct sentencing bracket applicable to the Petitioner i.e. the Petitioner’s precise culpability under the relevant statutory provisions.

- 9. The law adopts a stringent stance on narcotics-related offences, and bail is not to be granted as a matter of course, given the significant threat such offences pose to societal well-being. This concern underpins the strict bail regime introduced under the newly enacted Act 2024. While not seeking to trivialise the quantity allegedly recovered or the gravity of the offence, it bears noting that the said quantity falls on the lower end of the statutory spectrum. Coupled with the fact that the Petitioner has remained incarcerated since 4.5.2025, without any tangible progress in the trial, the matter warrants due consideration.
- 10. Despite the specific directions issued on 17.6.2025 for submission of a progress report by the trial court, no report has been received to date.
- 11. In response to the Court’s query regarding the progress of the trial, the learned Assistant Prosecutor General submitted that the delay stemmed from the late constitution of Special Courts and/or appointments of judges by the Government of Sindh, as envisaged under Section 30 of the Act 2024. However, this omission on the part of the Government cannot be regarded as a valid excuse. The failure to establish Special Courts does not justify any delay in the conduct of trials – particularly in light of the proviso to Section 30(3)¹, which expressly stipulates that, until such courts are constituted, existing competent courts shall continue to function for the expeditious disposal of narcotics cases.
- 12. The likelihood of the Petitioner’s continued incarceration absent any meaningful progress in trial proceedings, constitutes a denial of his fundamental right to a fair and expeditious trial as guaranteed under Section 35(2) of the Act 2024, which mandates the conclusion of trials within six (6) months.
- 13. Given the above, the Petitioner is admitted to post-arrest bail upon furnishing a solvent surety in the sum of Rs.100,000/- (Rupees One Lac only), along with a P.R. Bond in the like amount to the satisfaction of the Additional Registrar of this Court.

¹ Section 30 of *Sindh Control of Narcotics Substances Act, 2024*: Establishment of special court:

- (1)
- (2)
- (3)

Provided that until the Special Courts are established under this section, the existing competent court shall continue to perform its functions for the speedy disposal of narcotics cases.

14. The Petitioner shall ensure his attendance on all dates before the Trial Court. The observations made in this order are tentative and the Trial Court shall not be influenced by the same while deciding the case on merits.
15. The Petition stands disposed of in the above terms.

JUDGE

JUDGE