

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Const. Petition No.D- 729 of 2025

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

Petitioner : **Hidayatullah alias Souf Mirani** through Mr. Rukhsar Ahmed Junejo, Advocate.

The Respondents: **The State and Province of Sindh** through M/s Syed Sardar Ali Shah, Additional P.G and Agha Athar Pathan, Assistant A.G.

Date of Hearing : **08-07-2025**
Date of Decision : **08-07-2025**

O R D E R

RIAZAT ALI SAHAR, J. By way of this order petitioner Hidayatullah alias Souf bycaste Mirani seeks his admission on post arrest bail in crime No.51 of 2025 registered with Police Station Airport Sukkur for offence punishable under section 9 (3) (c) Sindh Control of Narcotic Substances Act, 2024, for allegedly possessing 3000 grams of Charas.

2. Since facts of the prosecution case are already mentioned in the FIR as well as in the memo of petition; therefore, there is no need to reproduce the same. Reliance is placed on the case of **Muhammad Shakeel v. The State & others** (PLD 2014 SC 458).

3. Learned counsel for the petitioner argued that the petitioner is innocent and has falsely been implicated in this case by the police and the alleged recovery of Charas has been foisted upon him. He further

contended that the petitioner is a Government servant working as Beldar in Irrigation department and is at the verge of superannuation; therefore, question of his absconsion being government employee does not arise. He next submits that recovery so affected from petitioner is 3000 grams of charas is meager quantity besides the punishment for offence as provided under the Act is/may extend to 14 years and not less than 9 years. Hence, submits when the statute provides two punishments; then lesser one may be considered at bail stage. He further argued that by virtue of Section 17(2) of the Act (as amended), the police official was under obligation to record video of recovery proceedings but he failed even by virtue of Section 17 of the Act, being HC was not competent to seize the narcotics or make arrest of the accused without warrant or investigate the case. He next submits that the cases shown to have been registered against the petitioner are still pending adjudication and petitioner has not been convicted for any offence. He, therefore, submits that case against the petitioner requires further enquiry hence by granting this petition, the petitioner may be directed to be released on bail. In support of his contentions he placed his reliance on the case of **ZAHID SARFRAZ GILL Versus THE STATE (2024 SCMR 934)**.

4. Syed Sardar Ali Shah, Additional Prosecutor General Sindh and Agha Athar Hussain Pathan, Assistant Advocate General Sindh though opposes the petition on the ground that quantity of contraband shown to have been recovered from petitioner is not meager and cannot be foisted easily by the Head Constable. Learned Law Officers after going through Section 7 of the Act and its provisions submits that petitioner is not previously convict even no CRO has been made available to show

any similar case pending against him, therefore, they have no objection for grant of bail. The learned Law officers further points out that challan of the case was submitted by Investigating officer on 12.06.2025 before the Court of Civil Judge & Judicial Magistrate-I Sukkur which is still pending adjudication before the trial Court.

5. We have heard learned counsel for the petitioner as well as law officers and have gone through the material made available before us on record.

6. It remains undisputed that the Act of 2024, has come into force within the territorial jurisdiction of Sindh, thereby repealing the applicability of the Federal Control of Narcotic Substances Act, 1997. Section 35 (1) of the Act of 2024, unequivocally bars the application of Sections 496 and 497 Cr.P.C, thereby ousting the jurisdiction of subordinate courts from entertaining bail applications in cases pertaining to narcotic offences. However, in view of the fundamental rights enshrined under Articles 9, 10-A, and 14 of the Constitution, this Court retains jurisdiction under Article 199(1)(c) to entertain post-arrest bail petitions, notwithstanding the ouster clause encapsulated in Section 35(1) of the Act of 2024. Reliance is placed on the seminal judgment of the Supreme Court in a case of **Khan Asfandiyar Wali v. Federation of Pakistan** (PLD 2001 SC 607), wherein it was authoritatively held that statutory ouster clauses cannot supersede constitutional jurisdiction when fundamental rights are in question.

7. No doubt, the petitioner has been nominated in the FIR, and 3000 grams of contraband substance, viz. Charas, is shown to have

been recovered from his possession. However, the punishment provided by law for the said offence is “*may extend to fourteen years but it shall not be less than nine years*”. As per the settled principle, when a statute provides two sets of punishment, the lesser one is to be considered at the bail stage. It is also a settled principle of law that every accused is presumed to be innocent unless proven guilty, and the law cannot be stretched in favour of the prosecution, particularly at the bail stage.

8. Now, reverting to the maintainability of this petition, the learned law officers submitted that the petitioner cannot be granted bail through this petition without addressing the directions issued by the Larger Bench in C.P. No.D-937 of 2025. They further admit that the Provincial Government has not yet established any Tribunal or designated Special Courts to try such cases. It is also a settled law that the mere heinousness of the offence or gravity of the statute does not deprive a citizen of his liberty. No one can be kept behind bars indefinitely without progress in the trial. This is precisely the situation in the present case. The FIR was lodged in March 2025, and under the new enactment, the trial is required to be concluded within six months. However, no progress has been made due to non-establishment of a Tribunal or Special Court for the trial of the petitioner.

9. In the present case, although the alleged recovery is of 3000 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. In the circumstances and in view of above legal as well as factual position of record the petitioner has successfully made out a good *prima facie* case for grant of bail. The case of petitioner is purely covered by Section 497(2) Cr.P.C. Consequently, instant Petition was **allowed** by our short order dated 08.07.2025, whereby the petitioner **Hidayatullah alias Souf Mirani** was ordered to be released on bail subject to his furnishing solvent surety in the sum of **Rs.50,000/- (Fifty Thousand)** and P.R bond in the like amount to the satisfaction of the trial Court. These are the reasons in support of our above short order.

11. Needless to mention here that the observations recorded hereinabove are tentative in nature and shall not, in any manner, prejudice or influence the trial Court during the adjudication of the case

JUDGE

JUDGE