

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Constitution Petition No.D-1158 of 2025

Before:

Mr. Justice Yousuf Ali Sayeed;

Mr. Justice Abdul Hamid Bhurgri.

Petitioner : Muhammad Awais son of Muhammad Saeed
through Mr. Imtiaz Ahmed, advocate.

Respondents : Through Mr. Muhammad Ismail Bhutto,
Additional Advocate General and Mr. Khalid
Hussain Lakho, Deputy Prosecutor General.

Date of Hearing : 17.07.2025

Date of Order : 17.07.2025

O R D E R

Abdul Hamid Bhurgri, J : - The petitioner, through the instant petition under Article 199 of the Constitution, seeks post-arrest bail in view of the statutory bar contained in Section 35(1) of the Sindh Control of Narcotic Substances Act, 2024, and the judgment dated 22.04.2025 passed by a three-member bench of this Court in Constitutional Petition No. D-937 of 2025. The petitioner stands nominated in FIR No. 218 of 2025, registered on 22.06.2025 at Police Station A-Section, Tando Allahyar, wherein he is alleged to have been arrested on the spot, and a recovery of 505 grams of charas is shown to have been affected from his possession.

2. As per the averments contained in the FIR, on 22.06.2025 at approximately 0530 hours, the complainant, accompanied by his subordinate staff, departed the police station for routine patrolling, vide entry No. 39. During snap checking at Ali Park, they signaled to stop a motorcyclist coming towards Qila area. Upon inquiry, the individual identified himself as Muhammad Awais. Body search was conducted, which allegedly led to the recovery of a black plastic bag concealed in the left fold of his shalwar, containing a single large piece of charas weighing 505 grams. Subsequent to the alleged seizure and preparation of the requisite memo, the accused, along with the motorcycle and the recovered substance, was taken to the police station, where the instant FIR was registered.

3. Learned counsel for the petitioner has vehemently contended that the FIR is fictitious and has been registered with malafide intent. It is submitted that the petitioner, a respectable individual engaged in livestock trading, was enroute to purchase a buffalo while carrying Rs. 200,000/- in cash, which was unlawfully taken by the police during snap checking. In order to cover up this misdeed, a false and concocted case has allegedly been foisted upon him. It is further argued that the area is densely populated, yet no independent witness has been cited in support of the recovery. The petitioner, who is bereft of any prior criminal record, has sought relief under Section 497 Cr.P.C., maintaining that the alleged offence does not attract the prohibitory clause.

4. On the contrary, the learned Deputy Prosecutor General has opposed the prayer for bail, submitting that the petitioner is named in the FIR in connection with an exclusive recovery. It is further submitted that counsel for the petitioner has failed to establish any enmity or mala fide on the part of the police officials, thereby negating any plausible motive for false implication. Accordingly, it is prayed that the petition be dismissed.

5. We have heard the learned counsel for the petitioner as well as the learned Deputy Prosecutor General Sindh and have carefully examined the record.

6. The alleged recovery carries a punishment of not less than five years and extending up to nine years. It is a settled proposition of law that, at the bail stage, the Court is to consider the lesser prescribed punishment. Consequently, the offence, as alleged, does not fall within the ambit of “prohibited degree”.

7. It is also of significance that while the prosecution has alleged the petitioner was engaged in the sale of charas, no purchaser or other individual was apprehended at the scene. Notably, the incident is said to have occurred during daylight hours in a thickly populated locality, yet no effort was made to secure the presence of any neutral witness. It is well entrenched in our jurisprudence that where the entire edifice of the prosecution rests solely upon police testimony, unsupported by independent corroboration, the benefit of doubt must accrue to the accused even at the stage of bail. Reliance is placed upon *Muhammad Arshad v. The State* (2022 SCMR 1555). Furthermore, the petitioner is of previously unblemished character, with no antecedents of criminal conduct, and thus cannot be categorised as a habitual offender.

8. Prima facie, the petitioner's case appears to be one warranting further inquiry. Although official witnesses are legally competent, their credibility and veracity must ultimately withstand scrutiny at trial.

9. In view of the foregoing discussion, this petition was allowed. The petitioner/accused was admitted to post-arrest bail vide short order dated 17.07.2025, subject to furnishing a solvent surety in the sum of Rs.50,000/- and a personal bond in the like amount to the satisfaction of the learned trial Court.

10. It is clarified that the observations made hereinabove are tentative in nature and shall not prejudice the learned trial Court while adjudicating the matter on merits. The petitioner is directed to ensure his punctual attendance on each and every date of hearing before the Trial Court. In case of failure, the trial Court shall be at liberty to cancel the bail so granted to him.

J U D G E

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Irfan Ali