

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Const. Petition No.D- 957 of 2025

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

Petitioner : **Mukhtiar Ali Kori** through M/s Shah Muhammad Bango and Athar Hussain Abro, Advocates.

The Respondents: **The State and Province of Sindh** through M/s Aftab Ahmed Shar, Additional P.G and Athar Hussain Pathan, Assistant A.G.

Date of Hearing : **15-07-2025**
Date of Decision : **15-07-2025**

O R D E R

RIAZAT ALI SAHAR, J. Through instant petition, petitioner Mukhtiar Ali Kori seeks his admission on post-arrest bail in Crime No.10 of 2025, registered at Police Station Mehboob Kalhoro, District Khairpur for offence punishable under Section 9(1), Sr. No.1(b) of the Sindh Control of Narcotic Substances Act, 2024, for allegedly possessing 9000 grams of Bhang.

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 nothing to do with the alleged recovery of contraband item, which has been foisted upon him by the police. He further contended that recovery so affected from the petitioner i.e. 9000 grams of bhang is the meager quantity besides the punishment for offence as provided under the Act is “may extend to 07 years and not less than 03 years,” hence, submits when the statue 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, the ASI, in this case, was not

competent to seize the narcotics or make arrest of the accused without warrant or investigate the case. 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.

4. Learned Law Officers, after going through Section 17 of the Act and its provisions, submit 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.

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. In view of the express bar contained in Section 35(1) of the Sindh Control of Narcotics Substances Act, 2024, the petitioner is left without any efficacious remedy before the ordinary criminal forums. Where a statutory prohibition effectively forecloses access to bail, the constitutional jurisdiction of this Court under Article 199 may be invoked to safeguard the petitioner's fundamental right to liberty, as enshrined in Articles 9 and 14 of the Constitution. 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”.

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 Asfandiyar Wali v. Federation of Pakistan (PLD 2001 SC 607)***.

7. Allegedly, the recovery of 9000 grams of bhang was effected from the possession of petitioner by ASI, who under the Act was not competent to seize the narcotics or make arrest of the accused without warrant or investigate the case. Besides, the punishment for offence as provided under the Act is the imprisonment which may extend to seven years but shall not be less than three years, hence, it is settled law that when the statute provides two punishments, then lesser one may be

considered at bail stage, Hence, the alleged offence with which the petitioner is charged does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C, thus making bail the rule and jail the exception.

8. Furthermore, 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).

9. In the circumstances and in view of above legal as well as factual position of record the petitioner has succeeded to make out a good *prima facie* case for grant of bail. The case of petitioner is purely covered by Section 497(2) Cr.P.C. Accordingly, instant Petition was **allowed** by our short order dated 15.07.2025, whereby the petitioner **Mukhtiar Ali Kori** was ordered to be released on bail subject to their 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 / learned Sessions Judge, Khairpur. These are the reasons in support of our above short order.

10. 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