

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

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

ORDER

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 petitioners argued that the petitioners are innocent and have nothing to do with the alleged recovery of contraband item, which has been foisted upon them by the police. He further contended that in fact the petitioners were riding a motorcycle, which was without registration; however, they were in possession of its issuing letter. The police stopped them and demanded illegal gratification. On refusal, they have been booked in this false case. He further argued that recovery so affected from the petitioners i.e. 1500 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 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, 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 petitioners requires further enquiry; hence, by granting this petition, the petitioners may be directed to be released on bail.

4. On the other hand, learned Additional Prosecutor General for the State and learned Assistant Advocate General Sindh, present in Court in connection with other matters, waive notice and after going through Section 17 of the Act and its provisions, do not oppose the petition for grant of bail.

5. We have heard learned counsel for the petitioners 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 petitioners are 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 so affected from the petitioners i.e. 1500 grams of bhang is the meager quantity 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 petitioners are 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 petitioners have succeeded to make out a good *prima facie* case for grant of bail. The case of petitioners 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 petitioners **Zabaid Ali and Arbab Ali** were ordered to be released on bail subject to their furnishing solvent surety in the sum of **Rs.25,000/- (Twenty Five Thousand)** each and P.R bond in the like amount to the satisfaction of the trial Court / Judicial Magistrate-1, Rohri. 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