

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Const. Petition No.D- 887 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 : **Rustam Ali Phulpoto** through Mr. Ammar Ali Shahani, Advocate.

The Respondents: **The State and Province of Sindh** through M/s Aftab Ahmed Shar, Additional P.G and Agha 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 Rustam Ali Phulpoto seeks his admission on post-arrest bail in Crime No.21 of 2025, registered at Police Station Faiz Muhammad Narejo, District Khairpur for offence punishable under Section 9(1), Sr. No.1(c) of the Sindh Control of Narcotic Substances Act, 2024 (“**the Act**”), for allegedly possessing 11000 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 the SHO, Police Station Faiz Muhammad Narejo had taken away the petitioner from his house on the night falling between 29 and 30 May 2025 at 02:30 a.m., therefore, his family including his sons had made procession, which was reported in the captioned newspaper on 03.06.2025. He also submits that one Abdul Baseer, the son of the petitioner filed a habeas corpus petition bearing Cr. Misc. Application No.275 of 2025 under Section 491, Cr.P.C., before the Court of Additional Sessions Judge-III, Khairpur on 04.06.2025, which, on notice,

was disposed of due to registration of instant case against the petitioner. He, therefore, submits that the police with mala fide intention have implicated the petitioner.

4. Learned Law Officers, after going through the record, submit that the contraband shown to have been recovered from the petitioner is 11000 grams of Bhang and the punishment provided for the same under the Act is 07 to 14 years. They, however, do not oppose the petition.

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 11000 grams of Bhang was effected from the possession of the petitioner, for which the punishment for offence as provided under the Act is the imprisonment which may extend to fourteen years but shall not be less than seven 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, admittedly one Abdul Baseer, son of the petitioner had filed a habeas corpus petition bearing Cr. Misc. Application No.275 of 2025 under Section 491, Cr.P.C before the Court of Additional Sessions Judge-III, Khairpur on 04.06.2025, as the petitioner was taken away by SHO,P.S, Faiz Muhammad Narejo from his house on the night falling between 29th and 30th May, 2025 at 02:30 a.m, for which his family including his sons had made procession, which was reported in the captioned newspaper on 03.06.2025. However, said application was disposed of due to registration of FIR of instant case against the petitioner. The recovery though has been shown effected from his possession yet no video was recorded by the police whether the same was recovered from petitioner or otherwise. Since the petitioner has brought on record documentary evidence which nullifies the prosecution version besides the prosecution has failed to justify missing of the petitioner/keeping him under wrongful confinement right from 29.05.2025 to 04.06.2025.

9. 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 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 **Rustam Ali Phulpoto** 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 / Judicial Magistrate, Pir Jo Goth. 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

Ahmad/P.S