

HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 955 of 2025

(Mst. Zubeda v. The State & another)

Present:

Mr. Muhammad Saleem Jessar, J.

Mr. Riazat Ali Sahar, J.

Date of hearing : **23.07.2025**

Date of decision : **23.07.2025**

Mr. Gulshan Ahmed Shujra, Advocate for the petitioner.

M/s Athar Hussain Pathan, Assistant Advocate General and Khalil Ahmed Shaikh, Deputy P.G.

ORDER

Riazat Ali Sahar, J. – Through this petition, petitioner Mst. Zubeda wife of Allah Ditto seeks post arrest bail in Crime No.06 of 2025, registered at Police Station, Bagerji, under Section 9(B) of SCNS Act, 2024 (“**the Act**”), for allegedly possessing 520 grams of Charas.

2. The factual background has already been comprehensively set out in the FIR accompanying the petition for bail; accordingly, any reiteration is unnecessary and unwarranted, in line with guiding principles laid down by the Honourable Supreme Court in **Muhammad Shakeel v. the The State [PLD 2014 SC 458]**, wherein it was held that duplication of facts serves no practical purpose and should be avoided in the interest of judicial economy and clarity.

3. Learned Counsel for the petitioner argued that there are no reasonable grounds to believe the petitioner committed the offence. He contended that no recovery was made from the exclusive possession of the petitioner, that the FIR is stereotypical and illogical, and that the case is fraught with legal infirmities, notably the lack of independent witnesses despite the recovery allegedly taking place in a populated area, and the noncompliance with mandatory video recording under Section 17(2). He further pointed to the petitioner’s clean antecedents and local residence

and urged that bail, a rule rather than an exception, must not be withheld merely as a form of punishment.

4. Learned Law Officers, in view of above, did not oppose for the grant of bail to the petitioner.

5. Having heard both sides and perused the record, we first address the statutory framework. Section 35 of the Act provides that bail shall not be granted to an accused under the Act, notwithstanding Sections 496 and 497 Cr.P.C. However, subsection (2) stipulates that the trial must be concluded within six months, reflecting the legislature's intention to balance deterrence and public safety against the accused's right to expeditious trial. Importantly, the Larger Bench of this Court in **Constitutional Petition No. D-937 of 2025** has clarified that, in the absence of a statutory bail mechanism under the Act, petitions seeking bail fall within the constitutional jurisdiction of this Court under Article 199 of the Constitution. This principle draws support from the apex Court's ruling in **Khan Asfandiyar Wali v. Federation of Pakistan [PLD 2001 SC 607]**, where Section 9(b) of the NAB Ordinance, 1999, which excluded High Court jurisdiction to grant bail, was declared unconstitutional. The Supreme Court reaffirmed that superior courts retain their constitutional jurisdiction to entertain bail petitions, particularly where issues of fundamental rights arise.

6. The recovery alleged is 520 grams of charas, which falls under Section 9(1), Sr. No.3(b) of the Act, punishable up to 09 years, and thus does not attract the prohibitory clause of Section 497(1) Cr.P.C. Hence, the matter is to be considered under Section 497(2) Cr.P.C., requiring further inquiry.

7. It is also pertinent to note that the recovery was allegedly made by an ASI, whereas superior courts have consistently held, particularly in **Zahid Sarfraz Gill v. The State [2024 SCMR 934]** and **Muhammad Abid Hussain v. The State [2025 SCMR 721]**, that raids and recoveries under narcotics law should preferably be conducted by officers of appropriate

rank, and be video recorded to ensure transparency and fairness. Here, neither of these safeguards was followed.

8. Additionally, no independent witnesses were associated with the recovery process despite the recovery being in a public place during daylight, which further casts doubt on the prosecution's version. The delay in sending the sample to the chemical examiner without explanation adds to the list of procedural infirmities.

9. In view of the above, the case against the petitioner calls for further inquiry under Section 497(2) Cr.P.C. The petitioner is entitled to be admitted to bail, especially in light of Article 10-A of the Constitution, ensuring fair trial and due process. Accordingly, the petition is **allowed**. Petitioner Mst. Zubeda is admitted to bail subject to her furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand only) and P.R bond in the like amount to the satisfaction of learned trial Court/Sessions Judge, Sukkur.

10. It is clarified that the above observations are tentative and shall not prejudice the merits of the case during trial.

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