

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Constitution Petition No.D-1110 of 2025

Before:

Mr. Justice Yousuf Ali Sayeed;

Mr. Justice Abdul Hamid Bhurgri.

Petitioner : Mst. Jamal Khatoon d/o Muhammad
Siddique Brohi, w/o Ibrahim Brohi,
through Mr. Sunil Kumar, Advocate.

Respondents : P.O Sindh and two others,
through Mr. Irfan Ali Talpur,
Deputy Prosecutor General Sindh.
Mr. Muhammad Ismail Bhutto, Additional
Advocate General Sindh,

Date of Hearing: 18.07.2025.

Date of Order. 18.07.2025.

ORDER

Abdul Hamid Bhurgri, J.- The petitioner seeks post-arrest bail through the instant petition filed under Article 199 of the Constitution, in view of the embargo contained in Section 35(1) of the Sindh Control of Narcotic Substances Act, 2024. Reference is made to 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 is accused in FIR No. 41 of 2025, lodged at Police Station Taluka Nawabshah on 12.05.2025, wherein she is alleged to have been apprehended on the spot with a recovery of 450 grams of Ice from her possession.

2. According to FIR, on 12.05.2025 during patrolling, the complainant received spy information that a male and a female while taking contraband were coming from Sukkur on a Mehran Car No.BFF-920 of white colour and, therefore, complainant together with his staff reached Mehran highway paradise and started checking. In the meanwhile said Mehran car reached; on signal by police party, the car stopped. A male was driving the car, a female was seated on cleaner side and they both were got down. On inquiry male disclosed his name as Javed Ali; during his body search, a white shopper was secured from fold of his shalwar, which was found containing Ice weighed to be 500 grams and his further body search led to recovery of Rs.2000/-. Female disclosed her name as Mst. Jamal Khatoon and a white shopper was secured from his hand, which was also found

containing Ice weighing 450 grams. Property was sealed at spot. Accused failed to show papers of vehicle. After preparation of memo of arrest and recovery, accused and property were brought at PS, where instant FIR was lodged.

3. Learned counsel for the petitioner submits that the FIR is false and has been registered with malafide intend. He argued that neither contraband material was recovered from possession of petitioner nor she was apprehended at spot but the property shown has been foisted upon petitioner. He claimed no independent witnesses were cited, despite the area being densely populated. The petitioner, belonging to a respectable family and lacking prior criminal record, hence sought bail.

4. Learned Deputy Prosecutor General has opposed the grant of bail to the petitioner by submitting that the petitioner's name transpires in the FIR and a huge quantity of contraband material was recovered from exclusive possession of the petitioner. He prayed for dismissal of the petition for post arrest bail.

5. We have heard the learned counsel for the petitioner as well as the learned Deputy Prosecutor General Sindh and have perused the material available on record.

6. The alleged offence of recovery carries imprisonment which may extend to five years but shall not be less than three years and it is settled law that at bail stage lesser punishment is to be considered. Consequently, the purported recovery from the petitioner does not fall within the ambit of an offence of a "prohibited degree", thereby rendering bail the norm and incarceration the exception.

7. Furthermore, the alleged recovery is stated to have taken place in a densely populated locality; nonetheless, the police failed to associate any neutral or independent witnesses at the relevant time. It is a cardinal principle of criminal jurisprudence that where the prosecution's case is premised exclusively upon official testimony, devoid of corroboration from impartial and independent witnesses, the benefit of doubt must necessarily accrue to the accused. In this regard, reliance is placed upon the precedent laid down in ***Muhammad Arshad v. The State (2022 SCMR 1555)***. Additionally, the petitioner is a woman and has no prior criminal antecedents and, therefore, cannot be categorized as a habitual offender.

8. Prima facie, the accusations against the petitioner warrant further inquiry. While official witnesses may be accorded the same evidentiary value as private witnesses, the veracity of their statements must nonetheless be subjected to scrutiny during trial.

9. It is in view of the foregoing considerations that the petition was allowed vide a short order dated 18.07.2025 and the petitioner/accused was admitted to post-arrest bail subject to her furnishing a solvent surety in the sum of Rs.50,000/- and an equivalent P.R. bond to the satisfaction of the learned trial Court.

10. It is clarified that the observations recorded hereinabove are merely tentative and shall not prejudice the learned trial Court in adjudicating the case on its merits. The petitioner shall ensure her punctual attendance on each and every date of hearing, failing which the trial Court shall be at liberty to recall the concession of bail.

Judge

Judge