

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Constitution Petition No.D-1003 of 2025

Before:

Mr. Justice Yousuf Ali Sayeed;

Mr. Justice Abdul Hamid Bhurgri.

Petitioner : Nourez son of Hussain Bux Magsi,
through Mr. Muhammad Hussain Brohi,
Advocate.

Respondents : Investigating Officer and another,
through Mr. Irfan Ali Talpur,
Deputy Prosecutor General Sindh.
Mr. Muhammad Ismail Bhutto, Additional
Advocate General Sindh,

Date of Hearing: 21.07.2025.

Date of Order. 21.07.2025.

ORDER

Abdul Hamid Bhurgri, J.- This is a Constitution Petition filed Under Article 199 of the Constitution by the accused praying for post arrest bail 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. 156 of 2025, lodged at Police Station Jamshoro, District Jamshoro on 25.05.2025, wherein he is alleged to have been apprehended on the spot with a recovery of 290 grams of charas from his possession.

2. Prosecution's story is that on 25.05.2025 at 1430 hours vide entry No.18 complainant together with his staff left PS for patrolling and when they reached near village Chakar Khan Rajpar near link road leading towards Petaro, they saw a person, who seeing them tried to evade but he was apprehended by police party at 1500 hours. On inquiry, he disclosed his name as Nourez. On his body search, a black shopper was secured from his right side pocket, which was found containing a piece of charas and it was weighed to be 290 grams. His further body search led to recovery of three currency notes each of Rs.100/- (total Rs.300/-). Property was sealed at spot and memo was also prepared. Thereafter accused and property were shifted to PS, where complainant lodged instant FIR.

3. Learned counsel for the petitioner submits that the FIR is false and has been registered with malafide intend and the contraband material has been foisted upon the petitioner. He further argued that the petitioner was abducted three days before FIR in respect of an inquiry but later on he was falsely booked in this case. He also argued that the petitioner is a patient of AIDS and he requires quarterly treatment. He claimed no independent witnesses were cited, despite the area being densely populated. The petitioner, belongs to a respectable family and lacks prior criminal record, hence has sought bail.

4. Learned Deputy Prosecutor General has opposed the grant of bail to the petitioner by submitting that the name of the petitioner transpires in the FIR and contraband material was recovered from his exclusive possession; that the counsel for the petitioner has failed to demonstrate the existence of any enmity between the petitioner and the police officials, thereby negating any motive for the police to falsely implicate the petitioner in the present case. 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 record reveals that the contraband allegedly recovered from the petitioner including shopper amounts to 290 grams of charas. The prescribed punishment for such a quantity does not exceed five years. 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 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 21.07.2025 and the petitioner/accused was admitted to post-arrest bail subject to his 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 his 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