

**IN HIGH COURT OF SINDH, CIRCUIT COURT  
LARKANA**

**C.P No. D-474 of 2025**  
*[Abid Ali Junejo v. The State]*

**Before:**  
**Mr. Justice Muhammad Saleem Jessar**  
**Mr. Justice Riazat Ali Sahar**

Petitioner: **Abid Ali Junejo** through Mr.  
Abdul Rasheed Pathan,  
Advocate

The State & P.O.Sindh: Through M/s Waheed Ahmed  
Shaikh, Assistant Prosecutor  
General, Sindh and Mr.  
Munwar Ali Abbasi, Assistant  
Advocate General, Sindh a/w  
SIP Abdul Majeed,  
Investigating Officer.

Date of Hearing: **04.07.2025**  
Date of Order **04.07.2025**

**ORDER**

**Riazat Ali Sahar, J.-** Through this petition, petitioner Abid Ali son of Muhammad Amin Junejo seeks post-arrest bail in Crime No. 02/2025 registered at Police Station Seehar, District Dadu, for an offence punishable under Section 9 (i) (b) of the Sindh Control of Narcotics Act, 2024 (hereinafter “the Act”).

2. The Sindh Control of Narcotics Act, 2024 (hereinafter referred to as “the Act”), does not contain any express provision for the grant of bail, as evident from the language of Section 35 of the Act, which provides as under:

**35. No bail is to be granted in respect of certain offences-** (1) *Notwithstanding anything contained in sections 496 and 497 of the Code, the bail shall not be granted to an accused person charged with an offence under this Act.*

However, in Constitutional Petition No. D-937 of 2025, a Larger Bench of this Court at its Principal Seat, through an order dated

22.04.2025 authored by the Honourable Acting Chief Justice of Sindh, has held that in the absence of any specific provision for bail under the Act, all matters pertaining to bail fall exclusively within the jurisdiction of the High Court under its constitutional mandate.

3. Reliance may also be placed on the judgment of the Honourable Supreme Court in *Khan Asfandiyar Wali v. Federation of Pakistan* [PLD 2001 SC 607], wherein the constitutionality of the NAB Ordinance, 1999 was examined. The apex Court declared Section 9 (b) of the NAB Ordinance, which ousted the High Courts' jurisdiction to grant bail, as **ultra vires** the Constitution. It affirmed the High Courts' authority under Article 199 to consider bail matters, thereby reinforcing the principle that access to judicial review cannot be statutorily curtailed where fundamental rights are at stake.

4. The allegation against the petitioner is that on 11.02.2025 at about 2230 hours, ASI Ali Dino Buledi of PS Seehar, while patrolling at Picket Yaroo Lakhair along with police officials as per roznamcha entry No.13, intercepted a loader rickshaw coming from village Wadda. Upon inspection, the rickshaw was found loaded with ten bachkas (each of 20 kg) filled with hemp, totaling 2000 grams. The accused, who identified himself as Abid Ali son of Muhammad Amin Junejo, was arrested. Upon personal search, currency notes of Rs.1000/- and Rs.500/- were allegedly recovered. Due to the absence of public mashirs, police officials Ghulam Abbas and Asad Ali acted as mashirs. The contraband and cash were seized, mashirnama prepared, and sent for chemical analysis. The FIR was subsequently lodged under Section 9 (i) (b) of the Act.

5. Mr. Abdul Rasheed Pathan, learned counsel for the petitioner, contends that the FIR is a result of police enmity and lacks evidentiary value. He contends that the narration in the FIR is stereotypical, superficial, and fails to inspire confidence. It is contended that no contraband was recovered from the petitioner's exclusive possession; instead, the arrest and recovery were staged at the police station. He also pin points the petitioner's clean record,

local residence and willingness to cooperate with the investigation. He contends that bail should not be denied as a punishment, particularly when prolonged incarceration may cause irreparable harm in the event of acquittal. He prays for bail on the grounds of *mala fide*, further inquiry and lack of credible evidence.

6. Conversely, Mr. Waheed Ahmed Shaikh, learned Assistant Prosecutor General, opposes the bail plea, asserting that the petitioner was apprehended red-handed with 2000 grams of hemp, which squarely attracts Section 9 (i) (b) of the Act. He contends that all legal formalities were complied with, including the preparation of mashirnama and dispatch of samples for chemical examination. He explains that the absence of private mashirs is due to public reluctance to participate in narcotics proceedings, which by itself is not fatal to the prosecution's case. He contends that due to the severity of the offence and presumption of guilt, the petitioner has not made out a case for bail.

7. Heard and record perused.

8. **Section 35** of the Act is bifurcated into two limbs. The first limb seeks to bar bail in narcotics cases to deter the escalating drug menace. The second limb of Section 35 mandates the trial to be concluded within six months. This reflects the legislature's balancing act—to deter offenders while protecting the rights of the accused from prolonged pre-trial detention, especially where they may have been falsely implicated. However, the implementation of this safeguard remains uncertain due to the non-establishment of Special Courts under the Act.<sup>1</sup>

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<sup>1</sup>The urgent need of such special court was also emphasized by Muhammad Karim Khan Agha, J in Syed Sahir Hassan v. P.O Sindh & others [CP No. D-937 of 2025] as :

"Accordingly a copy of this order shall be sent to the Chief Secretary and Secretary Law, government of Sindh, who shall ensure that special Courts under the aforesaid Act are established immediately and the Judges for such Courts shall be appointed in accordance with law expeditiously so that these cases can be tried and the petitioner and other may not left languishing in jail without any resource"

9. The scope and application of Section 17 of the Act are vital in this context. Section 17 (1) permits search and arrest without warrant, but only by an officer not below the rank of Inspector, duly authorized by the Director General Narcotics Control Sindh. Section 17 (2), a crucial procedural safeguard, requires **mandatory video recording** of all raids, seizures and arrests. This is to ensure transparency, prevent abuse of authority and authenticate recovery. This statutory mandate, far from being procedural formality, is grounded in due process and aims to uphold the integrity of narcotics enforcement actions. Reliance is placed on the observations of the Honourable Supreme Court in *Muhammad Abid Hussain v. The State* (2025 SCMR 721) and *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934), wherein the Court underscored the evidentiary value of visual documentation in validating recovery proceedings. The interconnected provisions under Chapter-III of the Act (Sections 16, 17, and 18) further reinforce that such operations must adhere strictly to statutory safeguards. For ease of reference, the following provisions are reproduced:-

### **CHAPTER – III** **SEARCH AND INVESTIGATION**

**17. Power of entry, search, seizure and arrest without warrant.** – (1) Where an officer, not below the rank of Inspector Narcotics Control or equivalent authorized in this behalf by Director General Narcotics Control Sindh, who from his personal knowledge or from information given to him by any person is of opinion that any narcotic drug, psychotropic substance, precursor chemicals or controlled substance and methamphetamine in respect of which an offence punishable under this Act has been committed is kept or concealed in any building, place, premises or conveyance, and a warrant for arrest or search cannot be obtained against such person without affording him an opportunity for the concealment of evidence of facility for his escape, such officer may-

- (a) Enter into any such building, place, premises of conveyance;
- (b) Break open any door and remove any other obstacle to such entry in case of resistance;
- (c) Seize such narcotics drugs, psychotropic substances, precursor chemical, controlled substances and other materials used in the

manufacture thereof and any other article which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act; and

- (d) Detain, search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed an offence punishable under this Act.

(2) The video recording of all raids, seizures, inspections and arrests shall be made by the officer in-charge of such operations.

(3) Before or immediately after taking any action under sub-section (1), the officer referred to in that sub-section shall record the grounds and basis of his information and proposed action and forthwith send a copy thereof to his immediate superior officer.

(4) All the offences under this Act shall be cognizable and non-bail-able.

#### **18. Power to seizure and arrest in public place. -**

An officer authorized under section 17 may -

- (a) Seize, in any place or in transit, any narcotic drug, psychotropic substance, precursor chemical or controlled substance in respect of which he has reason to believe that an offence punishable under this Act has been committed, and, along-with such drug, substance or any other article liable to confiscation under this Act, and any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act; and
- (b) Detain and search any person whom he has reasons to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug, psychotropic substance, precursor chemical or controlled substance in his possession and such possession appears to him to be unlawful, arrest him.

**10.** The principle emerges that bail should not be denied merely on the quantum of narcotics recovered. The Court must also examine whether procedural safeguards were followed, whether the recovery was credible and whether the accused was legally apprehended by an authorized officer.

**11.** Once the prosecution *prima facie* shows recovery, the burden shifts to the accused to raise doubts through cogent material to bring the case under the ambit of further inquiry under Section 497

(2) Cr.P.C. In the present case, while the alleged recovery is substantial, the punishment under Section 9 (i) (b) is less than ten years; hence not falling within the prohibitory clause of Section 497 (1) Cr.P.C. Accordingly, the threshold for bail is lowered.

12. Importantly, the arrest was allegedly made during daylight hours, yet no private mashirs were associated. The officer who effected arrest and registered the FIR was an Assistant Sub-Inspector, although Section 17 (1) requires an officer not below the rank of Inspector to conduct such operations. Further, the absence of mandatory video recording under Section 17 (2) casts serious doubt on the legality of the recovery. These violations collectively place the case squarely within the realm of further inquiry.

13. In light of the above, a tentative assessment of the record does not justify the petitioner's continued detention. Therefore, by our short order dated 04.07.2025, the instant petition was allowed. Petitioner **Abid Ali son of Muhammad Ameen Junejo** was directed to be released on bail, subject to furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand only) and a personal bond in the like amount to the satisfaction of the trial Court. These are the reasons for our above said short order. The instant petition stands **allowed**.

14. Needless to say, any observation made hereinabove is tentative in nature and shall not influence the outcome of the trial.

***JUDGE***

***JUDGE***

***Manzoor***