

HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 696 of 2025

(Nizamuddin Rind v. The State)

Present:

Mr. Arbab Ali Hakro, J.

Mr. Abdul Hamid Bhurgri, J.

Date of hearing : **17.06.2025**

Date of decision : **17.06.2025**

Mr. Sher Gul Mahar, Advocate for petitioner.

Mr. Aftab Ahmed Shar, Additional Prosecutor General.

ORDER

Arbab Ali Hakro, J. – Through this Constitutional Petition under Article 199 of the Constitution, the petitioner seeks post-arrest bail in Crime No.72 of 2025, registered at Police Station Ubauro, District Ghotki, for an offence under Section 9(1), Serial No.3(a) of the Sindh Control of Narcotic Substances Act, 2024 (“**Act of 2024**”).

2. The FIR reflects that on 13.05.2025 at 1500 hours, ASI Allah Jiwayo Rind, accompanied by PCs Talib Hussain and Sajjad Hussain, and Driver HC Muhammad Wakeel, allegedly apprehended the petitioner near NHW Road, Chowk Mari Stop, following spy information. The petitioner was reportedly found holding a black plastic shopper containing 200 grams of charas. From this quantity, 50 grams were separated and sealed for chemical analysis. Due to the alleged absence of any private persons, the accompanying police officials acted as *mashirs*. The FIR was lodged at 1620 hours the same day.

3. Learned Counsel for the petitioner has argued that the case against the petitioner is fabricated and politically motivated, arising out of a local dispute and an alleged failure to pay bribes. He further submits that no independent witnesses were associated despite the recovery allegedly occurring at a public thoroughfare. According to him, this omission coupled with the delay of about one and a half hours in lodging the FIR, despite the short distance between the police station and the site of arrest, casts significant doubt on the veracity of the prosecution’s

version. The petitioner, it is contended, has no prior convictions and is willing to appear before the trial Court to face proceedings.

4. In contrast, learned Additional Prosecutor General has opposed the petition, asserting that the petitioner was arrested red-handed and the recovery is sufficient to *prima facie* connect him with the commission of the offence. He maintains that minor procedural lapses do not entitle the petitioner to bail, particularly in narcotics offences.

5. Having heard the arguments and perused the available record, the matter is examined in light of the settled legal framework.

6. It is by now well settled that the enactment of the Act of 2024 has effectively ousted the jurisdiction of subordinate courts to entertain bail applications, as per Section 35(1) of the said Act. However, the High Court continues to retain its constitutional authority under Article 199(1)(c) of the Constitution to consider bail matters, particularly where questions of liberty and due process arise. The principle laid down in **Khan Asfandiyar Wali's**¹ case by the Hon'ble Supreme Court affirms that statutory ouster clauses cannot override constitutional safeguards.

7. A guiding precedent on procedural integrity in narcotics cases is found in **Muhammad Abid Hussain's**² case, wherein the Hon'ble Supreme Court emphasized the importance of independent corroboration and transparency, especially during recovery proceedings. It was held that failure to employ modern investigative methods such as video recording, and the absence of neutral witnesses, weakens the evidentiary worth of recovery in bail matters.

8. Applying the above principles to the present case, it emerges that the prosecution's case is based entirely on the statements of police officials who were themselves part of the raiding party. No attempt was made to involve any independent witness, despite the recovery allegedly taking place in a public and populated area. Moreover, no video or photographic evidence of the recovery process has been placed on record, nor has any explanation been offered for this omission. This deliberate disregard of procedural safeguards and available

¹ Khan Asfandiyar Wali v. Federation of Pakistan (PLD 2001 SC 607)

² Muhammad Abid Hussain v. The State (2025 SCMR 721)

technological means casts serious doubt on the reliability of the recovery and undermines the prosecution's narrative at this preliminary stage.

9. The quantity of recovered contraband, 200 grams of charas, does not attract the prohibitory clause, and the maximum punishment under Serial No.3(a) of the Act of 2024 is five years. The manner in which the recovery was made and documented, particularly the lack of proper chain-of-custody procedures regarding the remaining 150 grams, further diminishes the reliability of the prosecution's case at this stage.

10. It is also not disputed that the petitioner has no prior convictions and is not shown to be a flight risk. The principle of bail being a rule and jail an exception applies with full force in cases where the prosecution's evidence calls for deeper judicial scrutiny.

11. In light of the above discussion, we are of the view that the case against the petitioner requires further inquiry. Accordingly, the petition is **allowed**. The petitioner, Nizamuddin son of Faqeer Bux Rind, is admitted to post-arrest bail in Crime No.72 of 2025, registered at Police Station Ubauro, District Ghotki, under Section 9(1), Serial No.3(a) of the Act of 2024, subject to his furnishing a solvent surety in the sum of Rs.60,000/- (Rupees sixty thousand) and a personal recognizance bond in the like amount to the satisfaction of the Additional Registrar of this Court.

12. It is clarified that the observations made herein are tentative in nature and shall not influence the trial Court during the proceedings of the case.

Above are the reasons for our short order dated 17.06.2025.

J U D G E

J U D G E

Abdul Basit