

HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 725 of 2025

(Adeel Surhio v. The State through Additional Prosecutor General Sukkur)

Present:

Mr. Arbab Ali Hakro, J.

Mr. Abdul Hamid Bhurgri, J.

Date of hearing : **17.06.2025**

Date of decision : **17.06.2025**

Mr. Shabbir Ali Bozdar, Advocate for petitioner.

Mr. Aftab Ahmed Shar, Additional Prosecutor General.

ORDER

Arbab Ali Hakro, J. – The petitioner, Adeel son of Gada Hussain Surhio, seeks post-arrest bail through the instant Constitutional Petition in Crime No.148 of 2025, registered at Police Station Moro, District Naushahro Feroze, for an offence punishable under Section 9(1), Serial No.3(c) of the Sindh Control of Narcotic Substances Act, 2024 (“**Act of 2024**”).

2. According to the prosecution, on 07.05.2025, ASI Sadam Hussain Khokhar, while on routine patrol with PC Farooque, PC Sajjad Hussain and DPC Gulab Khan Zardari, intercepted the petitioner near Yaral Shah Graveyard, Taluka Moro at 06:30 a.m. The petitioner was allegedly found holding a black plastic shopper, which, upon search, was found containing 1500 grams of charas. A portion of 50 grams was separated for chemical analysis. It is further alleged that the petitioner admitted selling the substance for financial gain.

3. Learned Counsel for the petitioner contends that the petitioner has been falsely implicated due to a personal dispute with the local police over non-payment of charges for repairing an air conditioner. It is further argued that the complainant, being an Assistant Sub-Inspector, was not legally competent to register the FIR under the Act of 2024. No private *mashirs* were associated with the recovery proceedings, despite the fact that the alleged place of incident is situated in a populated area. Furthermore, there is a complete absence of video or photographic evidence of the recovery process, which is required under Section

17(2) of the Act of 2024. Learned Counsel also points out that the FIR does not name any buyer, nor does it provide any independent evidence corroborating the petitioner's alleged confession. It is emphasized that the petitioner is a sole breadwinner of his family and has no previous history of conviction. Therefore, case of the petitioner requires further inquiry. He has relied upon the cases of Zahid Sarfaraz Gill v. The State (2024 SCMR 934) and Muhammad Abid Hussain v. The State and another (2025 SCMR 721).

4. On the other hand, learned Additional Prosecutor General has opposed the bail plea on the ground that the petitioner was caught red-handed with a considerable quantity of narcotics and has also confessed to selling drugs. He submits that the complainant was acting within his lawful authority and that procedural lapses, if any, are not fatal at the bail stage. He further argues that the statements of police officials are sufficient to support the recovery and that Courts have consistently held that technical violations do not justify bail in serious narcotics cases. He also places reliance on the petitioner's previous criminal record, including Crimes No.480/2022 and 124/2023 of Police Station Moro, to submit that the petitioner is a habitual offender.

5. We have considered the arguments advanced by both sides and carefully reviewed the material placed before us.

6. It is by now well settled that the High Court retains its constitutional jurisdiction under Article 199 of the Constitution to entertain bail petitions in view of the omission of expressed bail provisions under the Act of 2024. Reliance is placed upon the judgment of the Supreme Court of Pakistan in the case of Khan Asfandiyar Wali¹, wherein it was authoritatively held that statutory ouster clauses cannot supersede constitutional jurisdiction when fundamental rights are in question.

7. Although the recovery of 1500 grams of charas ostensibly falls under Section 9(1), Serial No.3(c) of the Act of 2024, which provides the punishment up to 14 years, however, the minimum punishment is nine years. Therefore, the offence does not per se attract the prohibitory clause. This Court is required to assess whether the case merits further inquiry.

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

8. A significant omission in the prosecution's case is the failure to comply with the mandatory provisions of Section 17(2) of the Act of 2024. No video or photographic evidence of the recovery has been produced, despite the Act explicitly requiring such documentation in warrantless search and seizure operations. This casts doubt on the transparency of the recovery proceedings. Furthermore, the prosecution has failed to associate any private *mashir* with the recovery, even though the alleged location is an open and accessible public area. Although strict compliance with Section 103 Cr.P.C. may not be mandatory in narcotics cases, the total absence of independent witnesses affects the credibility of the prosecution's version, particularly in view of the petitioner's plea of false implication.

9. The Supreme Court of Pakistan in the case of **Muhammad Abid Hussain**² has once again underscored the imperative of procedural fairness and the utilization of modern investigative techniques. It has been categorically held that the absence of video evidence and the non-association of independent witnesses in the recovery process casts serious doubt upon the prosecution's case. Furthermore, the Apex Court has reaffirmed that protection against arbitrary and unjust incarceration constitutes a fundamental constitutional safeguard, emphasizing that interim relief in the form of bail cannot be withheld solely on the ground that the offence entails severe punishment.

10. The fact that the FIR was registered by an ASI also requires judicial scrutiny. Though some case law supports the proposition that such FIRs are not automatically invalid, other precedents suggest that failure to involve an officer of appropriate rank may render the prosecution vulnerable to challenge, particularly when coupled with other deficiencies such as those noted above. The petitioner's alleged confessional statement is not corroborated by any other evidence, nor has any buyer or further investigative trail been produced to support the claim that the petitioner was involved in drug dealing. These factors collectively make the prosecution's case doubtful, at least at this stage, and invite deeper examination during trial.

11. As to the contention of the learned Additional Prosecutor General that the petitioner has a previous criminal record, including Crimes No.480/2022 and

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

124/2023 of Police Station Moro, and is therefore a habitual offender, learned Counsel for the petitioner has placed on record judgment dated 07.03.2023 and order dated 07.05.2024 pertaining to the said FIRs. From these documents, it is evident that the petitioner was acquitted under Section 265-H(1), Cr.P.C. and 249-A, Cr.P.C., respectively. In the absence of any conviction, the mere existence of previous cases, especially when the same have resulted in acquittal, cannot be used as a basis to deny the benefit of bail. It is a cardinal principle of criminal jurisprudence that every acquittal restores the presumption of innocence. Consequently, the prosecution's attempt to characterize the petitioner as a habitual offender stands negated by the record itself and cannot be made a basis to deny bail, especially when the present case already calls for further inquiry on independent grounds.

12. Accordingly, the petition is **allowed**. Petitioner, Adeel son of Gada Hussain Surhio, is admitted to post-arrest bail in Crime No.148 of 2025, registered at Police Station Moro, District Naushahro Feroze, under Section 9(1), Serial No.3(c) of the Act of 2024, subject to his furnishing a solvent surety in the sum of Rs.200,000/- (Rupees two lac) and a personal recognizance bond in the like amount to the satisfaction of the Additional Registrar of this Court.

13. Needless to state, the observations recorded herein are tentative in nature and shall not, in any manner, prejudice or influence the trial Court during the adjudication of the case.

Above are the reasons of our short order dated 17.06.2025.

J U D G E

J U D G E

Abdul Basit