

HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 808 of 2025

(*Gul Hassan 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. Shabbir Ali Bozdar, Advocate for petitioner.

Mr. Aftab Ahmed Shar, Additional Prosecutor General.

ORDER

Arbab Ali Hakro, J. – Invoking his constitutional right under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has approached this Court seeking post-arrest bail in connection with Crime No.78 of 2025, registered at Police Station Ubauro, District Ghotki, under Section 9(1), Serial No.3(a) of the Sindh Control of Narcotic Substances Act, 2024 (“**Act of 2024**”).

2. The FIR dated 18.05.2025 alleges that a police party led by ASI Sikandar Ali received spy information about a man carrying narcotics at Lundo Stop, Guddu Link Road. Upon arrival there on the same date at 1130 hours, the petitioner, who allegedly attempted to flee, was apprehended with a shopping bag containing 350 grams of charas, of which 50 grams was separated for chemical analysis. The *mashirs* named in the FIR were PC Qurban Ali Shaikh and PC Ghulam Rasool Samejo, both police officials. It was further alleged that the petitioner admitted selling charas.

3. Learned Counsel for the petitioner contended that the petitioner has been falsely implicated due to a long-standing personal dispute with local influential individuals stemming from a free-will marriage contracted by his brother. It was argued that the recovery proceedings were concocted, no private *mashirs* were associated despite the alleged recovery taking place in a public area, and no video or photographic evidence was presented. It was also stressed that the arresting officer, being an ASI, was not competent under the law to carry out such recovery.

4. On the other hand, learned Additional Prosecutor General opposed the bail plea, maintaining that the petitioner was caught red-handed with narcotics, confessed selling them, and thus the prosecution had sufficient material to establish a *prima facie* case. However, he did not contest the fact that the recovered quantity was 350 grams and that only 50 grams had been sent for analysis.

5. Heard learned Counsel for the petitioner as well as the learned Additional Prosecutor General, and perused the material available on record.

6. At the very outset, it is necessary to address the issue of jurisdiction. Although Section 35(1) of the Act of 2024 contains an ouster clause restricting jurisdiction of ordinary Courts, it is settled law that such statutory bars do not affect the constitutional jurisdiction of this Court under Article 199 where fundamental rights, including the right to liberty (Article 9) and fair trial (Article 10-A), are implicated. Reference is made to the authoritative pronouncement of the Honourable Supreme Court in the case of **Khan Asfandiyar Wali**¹.

7. On the merits, the prosecution case suffers from several legal and factual infirmities. The alleged recovery took place in a public area, yet no independent witness was associated. Both *mashirs* are subordinate police officials, violating the mandate of Section 103, Cr.P.C. No video or photographic evidence has been produced, despite advancements in technology and the prevalence of such equipment with police patrol units. These lapses raise doubts regarding the genuineness of the recovery. More crucially, the recovery and arrest were made by an Assistant Sub-Inspector (ASI). Section 21 of the Act of 2024 expressly authorizes only officers not below the rank of Sub-Inspector to conduct such operations. This statutory non-compliance undermines the legality of the entire recovery process. Reliance may be placed on the case of **Muhammad Abid Hussain**².

8. The total quantity of narcotics alleged is 350 grams, with only 50 grams sent for chemical analysis. This quantity does not fall within the prohibitory clause, and therefore the case requires further inquiry. It is a well-established principle of

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

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

criminal jurisprudence that in such circumstances, bail is to be granted unless there exist strong and exceptional grounds to deny it.

9. 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 and procedural safeguards are demonstrably breached.

10. Accordingly, this petition is **allowed**. Petitioner Gul Hassan son of Imam Bux Rind is admitted to post-arrest bail in Crime No.78 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, subject to furnishing solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand) and a P.R. bond in the like amount to the satisfaction of the Additional Registrar of this Court.

11. Needless to observe, the findings herein are tentative in nature and shall not prejudice the trial Court at the stage of final adjudication.

Above are the reasons for our short order dated 17.06.2025.

J U D G E

J U D G E

Abdul Basit