

HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 867 of 2025

(Sodho Gabol v. The State and others)

Present:

Mr. Arbab Ali Hakro, J.

Mr. Abdul Hamid Bhurgri, J.

Date of hearing : **26.06.2025**

Date of decision : **26.06.2025**

Mr. Achar Khan Gabol, Advocate for petitioner.

Mr. Ali Raza Baloch, Assistant Advocate General Sindh.

Syed Sardar Ali Shah Rizvi, Additional Prosecutor General along with SIP Hassan Ali Shar of Police Station Belo Mirpur.

ORDER

Arbab Ali Hakro, J. – Through this Constitution Petition, petitioner Sodho, son of Jhando, by caste Gabol, seeks his release on post-arrest bail in Crime No.25 of 2025, registered at Police Station Belo Mirpur, District Ghotki, for an offence under Section 9(1), Sr. No.3(a) of the Control of Narcotic Substances (Amendment) Act, 2022 (“**Act of 2022**”).

2. As per the FIR, the allegation against the petitioner is that on 03.06.2025 at 1700 hours, while present on the link road leading to Bago Dreho, complainant ASI Ali Asghar Laghari along with his subordinates saw the petitioner waiting for conveyance. Upon noticing the police party, the petitioner allegedly began to walk quickly towards the western side but was apprehended. A body search purportedly led to the recovery of a shopper containing 290 grams of charas, of which 90 grams were separated for chemical examination, and the remaining portion was also sealed on the spot.

3. Learned Counsel for the petitioner contended that the petitioner is an innocent person with no criminal history and has been falsely implicated in the present case due to his refusal to pay illegal gratification allegedly demanded by the police personnel. It is asserted that the petitioner was forcibly taken from his

home, and the alleged recovery was fabricated to justify the unlawful arrest and to demonstrate performance to senior officers. Learned Counsel further argued that the non-association of neutral mashirs, despite the recovery allegedly taking place at a public location, amounts to a violation of Section 103, Cr.P.C. Additionally, it is argued that the failure to record the recovery through video or photographic evidence is inconsistent with the investigative obligations prescribed under the law. These procedural deficiencies, it is submitted, raise serious doubts about the genuineness of the recovery. Moreover, it is emphasized that even if the alleged quantity of contraband is presumed correct, it does not fall within the prohibitory clause, and the case therefore qualifies as one of further inquiry.

4. Conversely, learned Additional Prosecutor General opposed the petition, asserting that the petitioner was caught red-handed with narcotics, and that the FIR was promptly lodged by competent police officials. He contended that serious allegations of possession of narcotics justify the petitioner's continued incarceration. Learned AAG Sindh, however, placing reliance upon this Court's order dated 05.06.2025, wherein 190 grams of charas was recovered and the bail was granted, conceded for bail.

5. Heard learned Counsel for the petitioner, learned Additional Prosecutor General as well as learned Additional Advocate General Sindh, and perused the record.

6. At this juncture, it is important to note that the FIR was registered under the Act of 2022, despite the fact that the Sindh Control of Narcotic Substances Act, 2024 ("**Act of 2024**") came into force on 29.10.2024, repealing the earlier legislation. Section 35(1) of the Act of 2024 explicitly bars the application of Sections 496 and 497 Cr.P.C., thereby ousting the jurisdiction of subordinate Courts to grant bail in such offences. However, the Investigating Officer, present, has submitted that while the interim challan has mistakenly been submitted under the repealed Act of 2022, this error will be rectified in the final challan. He has also

confirmed that no prior criminal record exists against the petitioner, as per the CRO verification.

7. In light of the above, the legal position is that since the alleged offence occurred on 03.06.2025 after the promulgation of the Act of 2024, the correct statute to be applied is the Act of 2024. Nonetheless, the procedural mistake in FIR registration does not vitiate the proceedings and can be corrected during the course of investigation. Thus, the constitutional petition remains a viable remedy, especially considering that the final challan is yet to be submitted, and the punishment under both the statutes, the repealed and the current, remains identical, i.e. from ten months to five years.

8. Furthermore, the bar under Section 35(1) of the Act of 2024 does not oust the jurisdiction of this Court under Article 199(1)(c) of the Constitution. The Supreme Court of Pakistan in the case of **Khan Asfandyar Wali**¹ has held that statutory ouster clauses cannot override constitutional safeguards, particularly where issues of liberty and fair trial under Articles 9, 10-A, and 14 are implicated.

9. In the case of **Muhammad Abid Hussain**², the Hon'ble Supreme Court categorically emphasized that absence of video evidence and non-association of independent witnesses in narcotics cases constitutes a serious procedural lapse, undermining the credibility of the prosecution's case. The Hon'ble Supreme Court further stressed that pre-trial incarceration, especially in the absence of convincing *prima facie* evidence, must not be allowed to infringe upon fundamental rights.

10. In the present case, the recovery of 290 grams of charas, even if presumed correct for purposes of bail, does not fall within the prohibitory clause. Notably, the entire case rests on testimony of police officials, with no corroboration from independent witnesses, even though the recovery was made from a publicly accessible location. The prosecution has also not produced any photographic or

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

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

videographic evidence to support the alleged recovery, in clear violation of settled judicial principles.

11. It is a well-settled proposition that where the prosecution's case is built solely upon police testimony without any neutral corroboration, particularly in offences carrying serious penal consequences, the benefit of doubt must be extended to the accused. This principle ensures that the presumption of innocence remains intact and that the accused is not subjected to prolonged and unwarranted pre-trial detention.

12. In view of the above, the instant petition stands **allowed**. Consequently, petitioner Sodho, son of Jhando Gabol is admitted to post-arrest bail in Crime No.25 of 2025, registered at Police Station Belo Mirpur, District Ghotki, for offence under Section 9(1), Serial No.3(a) of the Sindh Control of Narcotic Substances Act, 2024, subject to his furnishing solvent surety in the sum of Rs.60,000/- (Rupees sixty thousand) and P.R. bond in the like amount to the satisfaction of Additional Registrar of this Court. However, the petitioner is directed to appear before the trial Court on each and every date of hearing.

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

Above are the reasons for our short order dated 26.06.2025.

J U D G E

J U D G E

Abdul Basit