

HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 886 of 2025

(Nabi Bakhsh Shar 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 along with ASI Zahid Hussain.

ORDER

Arbab Ali Hakro, J. – Petitioner Nabi Bakhsh son of Atal Shar has approached this Court through the instant Constitution Petition, seeking post-arrest bail in Crime No.109 of 2025, registered at Police Station Mirpur Mathelo, 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 reveals that on 03.06.2025 at 1715 hours, a police party led by HC Zafar Ali Hyderani apprehended the petitioner near the Al-Khair Colony Main Gate at Bago Dreho Road. The petitioner allegedly attempted to retreat upon seeing the police but was apprehended. A search led to the alleged recovery of 165 grams of charas from a black plastic bag in the petitioner’s pocket. Due to the absence of private witnesses, two police constables, Abdul Kareem and Kamran Ali, were made *mashirs*. A portion of 65 grams of the recovered substance was separated for chemical analysis, and the rest was also sealed on site.

3. Learned Counsel for the petitioner contended that the arrest and recovery were fabricated at the behest of local influential persons. He argued that there are procedural deficiencies, including absence of neutral *mashirs*; failure to secure electronic or photographic evidence; and the fact that the entire operation was conducted by a police official not legally authorized under the law. It was further argued that the recovered quantity (165 grams) falls within the non-prohibitory category and, therefore, the case qualifies for further inquiry.

4. Learned Additional Prosecutor General opposed the petition, maintaining that the recovery substantiates the petitioner's involvement and supports the presumption under the Act of 2024.

5. We have heard learned Counsel for the petitioner as well as learned Additional Prosecutor General, and perused the record.

6. The case against the petitioner raises legal and factual concerns that undermine the certainty of the prosecution's version. Firstly, the recovery was effected by a Head Constable, whereas under the Act of 2024, search and seizure operations are legally mandated to be carried out by an officer not below the rank of Sub-Inspector. This statutory deviation alone raises a question of legality. Secondly, the alleged incident took place in a residential area, yet no independent witnesses were associated despite their availability. This omission violates the spirit of Section 103, Cr.P.C., and casts doubt on the integrity of the recovery process. Thirdly, no documentary, photographic or videographic evidence has been provided to support the claim of recovery, a gap which modern evidentiary expectations do not tolerate lightly.

7. Furthermore, the quantum of narcotic substance recovered, 165 grams of charas, falls within the non-prohibitory range. In such cases, it is settled law that bail is to be granted unless exceptional circumstances exist.

8. The Hon'ble Supreme Court in the case of **Khan Asfandyar Wali**¹ has recognized that even when statutes contain ouster clauses barring jurisdiction, the High Courts may invoke their constitutional jurisdiction under Article 199 to ensure that fundamental rights, such as liberty and fair trial, are not violated by abuse of process or executive overreach. The present petition challenges not the merits of the case per se, but the legality of the arrest, recovery procedure and prosecutorial conduct in light of constitutional protections under Articles 9 (security of person) and 10-A (fair trial).

9. Likewise, in the case of **Muhammad Abid Hussain**², the Hon'ble Supreme Court held that the absence of video evidence and the non-association of independent witnesses in the recovery process cast serious doubt upon the

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

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

prosecution's case. Furthermore, the Apex Court reaffirmed that protection against arbitrary and unjust incarceration constitutes a fundamental constitutional safeguard, and emphasized that interim relief in the form of bail cannot be withheld.

10. Applying these principles to the instant case, the irregularities in procedure, the doubtful legality of the recovery, and the absence of exceptional circumstances collectively indicate that the matter calls for further inquiry.

11. Accordingly, this petition is **allowed**. Petitioner Nabi Bakhsh son of Atal Shar is admitted to post-arrest bail in Crime No.109 of 2025, registered at Police Station Mirpur Mathelo, District Ghotki, under Section 9(1), Serial No.3(a) of the Sindh Control of Narcotic Substances Act, 2024, subject to furnishing a 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.

12. Needless to emphasize, the observations made herein are tentative and shall not prejudice the trial Court at the time of final adjudication.

Above are the reasons of our short order dated 17.06.2025.

J U D G E

J U D G E

Abdul Basit