

HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 730 of 2025

(Qurban Ali Pathan 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. Abdul Raheem Jamro, Advocate for petitioner.

Mr. Aftab Ahmed Shar, Additional Prosecutor General.

ORDER

Arbab Ali Hakro, J. – The petitioner has approached this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking post-arrest bail in Crime No.42 of 2025, registered at Police Station Agra, District Khairpur, 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. As per the contents of the FIR, the complainant SIP Muhammad Khan Agro, along with police officials, was on patrol on 13.05.2025 at 1315 hours when, acting upon spy information, intercepted the petitioner at Jado Wahan stop, allegedly in possession of a plastic bag containing four pieces of charas weighing 1100 grams. From each piece, 10 grams were separated for chemical analysis, while the remaining 1060 grams were sealed on the spot. It is further alleged that the petitioner admitted selling narcotics in association with a co-accused who managed to escape. The contraband was seized, and the petitioner was arrested at the spot.

3. Learned Counsel for the petitioner submitted that the petitioner is 74 years of age and suffering from multiple medical conditions including asthma, which render it implausible for him to be actively engaged in narcotics trafficking. It is further contended that the FIR is a result of enmity, arising from an earlier FIR lodged by the petitioner’s daughter under Sections 376, 511, PPC, against influential individuals. It is argued that the recovery proceedings are highly

doubtful, given that no private *mashir* was associated despite the incident occurring in a publicly accessible area, and that the complainant failed to record any video or photographic evidence of the alleged recovery, in violation of Section 17(2) of the Act of 2024. Learned Counsel further argued that the prosecution's case hinges solely on statements of police personnel, who are subordinates of the complainant, and thus cannot be treated as independent witnesses. Additionally, it is urged that the petitioner's alleged confession before police is inadmissible under Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984, as no judicial confession was recorded before a Magistrate. It is emphasized that no buyer has been named in the FIR and no direct evidence supports the prosecution's assertion of intent to sell. Learned Counsel prayed for bail on the ground that the matter calls for further inquiry and that the petitioner is willing to furnish surety. 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. Learned Additional Prosecutor General has opposed the bail plea, arguing that the petitioner was apprehended at the spot with a substantial quantity of charas, and his own statement confirmed the sale activity. He, however, candidly concedes that as per the report from the Senior Superintendent of Police, District Khairpur dated 05.06.2025, the petitioner has no previous conviction and only the present FIR is on record.

5. It is well settled that ouster clauses in special statutes do not affect the constitutional jurisdiction of this Court under Article 199 of the Constitution. Reliance is placed upon the judgment of the Hon'ble Supreme Court in the case of Khan Asfandiyar Wali¹, wherein it was held that constitutional jurisdiction remains intact where fundamental rights are at stake.

6. In the present case, the recovery proceedings are clouded with procedural lapses. The mandatory requirement under Section 17(2) of the Act of 2024 for documentation of warrantless search through video or photographs has not been complied with. This omission casts doubt on the transparency and authenticity of the recovery. Furthermore, the non-association of any independent witnesses, even when the alleged recovery was made from a public area, affects the

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

credibility of the case. Reliance is placed upon the case of The Supreme Court in the case of **Muhammad Abid Hussain**.²

7. Although the alleged quantity of charas, i.e. 1100 grams, falls within the range of Section 9(1), Serial No.3(c) of the Act of 2024 and carries punishment extending up to 14 years, the minimum prescribed sentence is 09 years. Therefore, the prohibitory clause does not automatically apply. The case thus qualifies for further inquiry.

8. It is also not disputed that the petitioner is of advanced age, suffering from medical conditions and is not shown to be a flight risk. As per the CRO report submitted by the Senior Superintendent of Police, District Khairpur, the petitioner has no prior convictions and is involved in only this one case. It is a cardinal principle of criminal jurisprudence that bail should not be withheld where the prosecution's evidence is open to serious doubt, and the accused is presumed innocent until proven guilty.

9. In view of the above, the petition is **allowed**. Petitioner, Qurban Ali son of Ghous Bux Pathan, is admitted to post-arrest bail in Crime No.42 of 2025, registered at Police Station Agra, District Khairpur, for an offence 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.1,00,000/- (Rupees one lac) and a personal recognizance bond in the like amount to the satisfaction of the Additional Registrar of this Court.

10. Needless to observe, the findings herein are tentative in nature and shall not prejudice the trial Court in any manner 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

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