

HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 807 of 2025

(*Pehlwan 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. – Petitioner Pehlwan son of Imam Bux Rind has approached this Court through the instant Constitution Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking post-arrest bail in Crime No.79 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 (“**Act of 2024**”).

2. As per the FIR dated 18.05.2025, a police party headed by ASI Allah Jiwayo Rind allegedly apprehended the petitioner Siwan Shakh Bridge at Reti Link Road, when he attempted to flee upon sighting the police. During his personal search, 400 grams of charas was allegedly recovered from his right pocket, of which 100 grams was sealed separately for chemical analysis. Due to the absence of any private witnesses, PC Shahzado Dhundho and PC Sultan Ahmed Soomro were nominated as *mashirs*. The FIR states that the petitioner confessed selling the narcotics.

3. Learned Counsel for the petitioner contended that the petitioner was falsely implicated at the behest of local influential persons due to a familial dispute arising out of a free-will marriage contracted by his brother. It is claimed that he was unlawfully picked up from his residence and later shown to have been arrested with narcotics. It was further submitted that no private witness was associated despite the incident allegedly occurring near a populated road, no video or photographic evidence was produced, and the arresting officer (an ASI) was not authorized to conduct such recovery under the law.

4. Turning to the prosecution's stance, learned Additional Prosecutor General opposed the bail plea on the ground that the petitioner was caught red-handed with a substantial quantity of charas, who confessed selling it. He contended that procedural irregularities, if any, are not fatal at the bail stage, and the statements of police officers are sufficient to establish *prima facie* involvement. He also submitted that the petitioner is a habitual offender, citing FIRs bearing Crime No.244/2022 and 78/2023 of Police Station Ubauro.

5. In rebuttal, learned Counsel for the petitioner submitted the case diaries dated 01.04.2023 and 07.12.2023 in the cases relating to the aforementioned FIRs, which establish that the petitioner was acquitted under Sections 249-A and 265-H(1), Cr.P.C., respectively.

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

7. At the very outset, it is essential to address the scope of this Court's jurisdiction. Although the Act of 2024 contains an ouster clause under Section 35(1), which bars jurisdiction of Courts other than those specifically established under the Act, it is by now firmly settled that such statutory exclusions do not curtail the constitutional jurisdiction of this Court under Article 199, particularly where the question involves fundamental rights, such as liberty under Article 9 and the right to fair trial under Article 10-A. In this regard, reliance may be placed on the judgment of the Honourable Supreme Court in the case of **Khan Asfandiyar Wali**,¹ wherein it was held that constitutional remedies remain available notwithstanding legislative ouster clauses.

8. Coming to the alleged recovery, several inconsistencies are apparent. The arrest and recovery were conducted solely by police officials without the presence of any private *mashir*, despite the occurrence allegedly taking place in a public area. No video or photographic evidence has been placed on record. Furthermore, the arresting officer was an ASI, whereas under Section 21 of the Act of 2024, only officers not below the rank of Sub-Inspector are authorized to conduct search and seizure. These statutory violations cast serious doubt upon the legality and credibility of the alleged recovery. In the case of **Muhammad Abid Hussain**,² the Hon'ble Supreme Court reiterated that the absence of independent witnesses and

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

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

video evidence, along with procedural irregularities, may vitiate the prosecution's case, and bail may be granted even in serious offences if the arrest is not in accordance with law.

9. The total quantity of charas allegedly recovered is 400 grams, out of which only 100 grams has been sent for chemical analysis. This quantity does not fall within the prohibitory clause, as interpreted in various binding precedents. In such cases, bail is to be granted as a rule unless strong and exceptional circumstances exist to justify its denial.

10. Moreover, in the absence of any conviction, reliance on past FIRs to characterize the petitioner as a habitual offender is legally untenable. It is a settled principle that every acquittal restores the presumption of innocence. Therefore, in view the above, including the doubtful nature of recovery, violation of mandatory legal provisions, lack of independent *mashirs*, absence of digital evidence, and the petitioner's clean record in view of past acquittals, the case certainly requires further inquiry.

11. Accordingly, this petition is **allowed**. Petitioner Pehlwan son of Imam Bux Rind is admitted to post-arrest bail in Crime No.79 of 2025, registered at Police Station Ubauro, District Ghotki, for 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.

12. Needless to observe, the findings herein are tentative and shall not prejudice the merits of the case at the trial stage.

Above are the reasons for our short order dated 17.06.2025.

J U D G E

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Abdul Basit