

HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 968 of 2025

(Abid Hussain Khokhar 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**

Ms. Fareeda, Advocate for petitioner.

ORDER

Arbab Ali Hakro, J. – Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner seeks post-arrest bail in Crime No.08 of 2024, registered at Police Station ANF, Sukkur, on 11.08.2024, under Sections 6,9(1)3(e), 14 and 15, the provisions of the repealed Control of Narcotic Substances Act, 1997 (“**Act of 1997**”) as amended by the Control of Narcotic Substances (Amendment) Act, 2022 (“**Act of 2022**”).

2. The facts, as alleged in the FIR, pertain to a spy-led narcotics interception operation wherein the petitioner was apprehended in a double-cabin vehicle near Taj Pump, Shikarpur Road, Sukkur, with co-accused Saeed Ahmed. The ANF claims to have recovered 39 kilograms of charas, allegedly concealed in secret cavities of the vehicle. From the personal possession of the petitioner, Rs.2,000/-, a service card, and a mobile phone along with a SIM were recovered.

3. Learned Counsel for the petitioner contends that no direct recovery of narcotics was made from the petitioner and that the alleged charas was found from a vehicle jointly occupied with a co-accused. He asserts false implication and that the case requires further inquiry. Reference has been made to precedents, including **2011 MLD 365** and **2013 MLD 48**, recognizing borderline cases and discrepancies in recovery as valid grounds for bail.

4. Heard learned Counsel for the petitioner and perused the record.

5. The FIR was lodged on 11.08.2024, prior to the promulgation of the Sindh Control of Narcotic Substances Act, 2024 (“**Act of 2024**”), which came into force on 29.10.2024 and repealed the Act of 1997 amended as the Act of 2022 in Sindh. The preliminary question for determination is whether this Constitutional Petition is maintainable since the Act of 2024 was promulgated after the occurrence of the alleged offence and registration of the FIR, and whether such legislation operates retrospectively to displace the procedural mechanisms available under the repealed statute.

6. Section 45(1) of the Act of 2024 expressly repeals the Act of 1997 within the territorial jurisdiction of Sindh. However, the guiding provision in this regard is Section 45(2) of the Act of 2024, which constitutes a classical saving clause akin to Section 6 of the General Clauses Act, 1897. It explicitly preserves, *inter alia*, rights, liabilities, proceedings, and remedies that accrued or were initiated under the repealed Act. More particularly, Section 45(2)(d) and (e) of the Act of 2024 provide that:

“45. **Repeal and saving.** – (1)

(2) *Notwithstanding the repeal of any law under sub-section (1), the repeal shall not, except as otherwise provided in this Act : –*

- (a)
- (b)
- (c)
- (d) *affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment; and*
- (e) *affect any such investigation, legal proceedings or remedy may be instituted, continued or enforced or any such penalty, forfeiture or punishment may be imposed, by the Courts or Authorities competent to investigate, try an offence under such law if the said law had not been repealed.”*

The words “continued” and “if the said law had not been repealed” make it abundantly clear that where the cause of action or alleged offence arose before 29.10.2024, proceedings will be regulated under the Act of 1997. Therefore, the repeal does not divest the accused of procedural rights such as the right to file a post-arrest bail under Section 497, Cr.P.C. read with the Act of 1997 before the competent forum, i.e. the Special Court or the Regular Bench of this Court as the case may be.

7. It is correct that Section 35(1) of the Act of 2024 declares:

“Notwithstanding anything contained in sections 496 and 497 of the Code, the bail shall not be granted to an accused person charged with an offence under this Act.”

However, this ouster clause is expressly tailored to bail proceedings under “this Act,” i.e. the Act of 2024. No express or implied language suggests that this provision was intended to apply “retrospectively” to offences committed prior to its enforcement. Any such retrospective application would be *ultra vires* in the absence of clear legislative intent, primarily where it affects the liberty of the subject. It is a well-settled principle of statutory interpretation that statutes affecting substantive rights, including procedural rights related to freedom, must be construed prospectively unless retroactivity is unambiguously expressed. In the present case, the legislative framework not only lacks any such clarity but, on the contrary, affirms prospective operation through the saving clause. Thus, the plea that Section 35(1) of the Act of 2024 bars the grant of bail is misconceived.

8. We are not inclined at this stage to consider the merits of this petition because the petitioner has directly invoked constitutional jurisdiction under Article 199 of the Constitution without exhausting the adequate and efficacious remedy available under ordinary law i.e. filing a post-arrest bail application before the Special Court established under Section 46 of the Act of 1997 or the Regular Bench of this Court. The reliance on the constitutional forum appears to be a procedural shortcut, especially in view of the fact that the FIR predates the Act of 2024 and therefore falls outside the restrictive framework of Section 35 of the Act of 2024.

9. In view of the above, we are of the considered view that the present offence was allegedly committed prior to the coming into force of the Act of 2024. The procedural rights under the repealed statute remain preserved by virtue of Section 45(2) of the Act of 2024. Section 35 of the Act of 2024 does not apply retrospectively and, therefore, cannot oust the jurisdiction of the competent Special Court established under Section 46 of the Act of 1997 or the Regular Bench of this Court. Accordingly, this Constitutional Petition is not maintainable before this Court, and the same is hereby **dismissed** in *limine* as being not maintainable along with pending miscellaneous applications.

J U D G E

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Abdul Basit