

IN HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD

C.P No. D-797 of 2025
[Syed Amjad Shah & another v. The State & others]

Before:
Mr. Justice Arbab Ali Hakro
Mr. Justice Riazat Ali Sahar

Counsel for Petitioner: Mr. Farhad Ali Abro, Advocate

Counsels/ Representatives for Respondents: Mr. Siraj Ahmed Bajrani, APG

Date of Hearing 27.05.2025

Date of Judgment 27.05.2025

JUDGMENT

RIAZAT ALI SAHAR, J. Through this judgment, we intend

to dispose of captioned petition, wherein the following relief is sought:

“a That this Honorable Court may be pleased to enlarge the petitioner/accused on bail in connection with FIR NO.93/2025 registered at PS Tando Jam, District Hyderabad and release him from custody pending trial.
b That this Honorable Court may kindly be pleased to declare the arrest of the petitioner/ accused is beyond the scope of Section 17(2) and 17(3)of the Sindh Control of Narcotics Substance act 2024 as the present FIR is registered in sheer violation of express provision of law.
c Any other relief deemed fit and proper that this court may be awarded to the petitioner.”

2. There exists no express provision regarding the grant of bail under the Sindh Control of Narcotics Act, 2024 (hereinafter referred to as “the Act”), as is evident from the language employed in Section 35, which reads as under:

35. No bail is to be granted in respect of certain offences- (1) 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, as per the order dated 22.04.2025 passed by the Larger Bench of this Court at its Principal Seat in Constitutional Petition No. D-937 of 2025, the Honourable Acting Chief Justice of Sindh, being the author of the judgment, was pleased to lay down that in view of the absence of any provision regarding the grant of bail under the Sindh Control of Narcotics Act, 2024 (“the Act”), all matters pertaining to bail under the said Act shall fall exclusively within the domain of the Constitutional Bench of the High Court of Sindh for consideration under its constitutional jurisdiction.

3. Tersely, the complainant, serving as SIP at PS Tando Jam, states that on 08-05-2025, while on patrol with subordinate staff, they received intelligence about two individuals—Syed Amjad Shah and Syed Wasayo Shah—selling charas at Abasi Mango Farm. Acting on this information, the police reached the location and apprehended the suspects in possession of plastic bags containing narcotics. Upon search, Amjad Shah was found with 1150 grams and Wasayo Shah with 1120 grams of charas, both packaged distinctly. The contraband was seized for chemical analysis, and the suspects admitted selling it for livelihood. A case under Section 9 (c) of the Sindh CNS Act was registered after completing legal formalities.

4. Mr. Farhad Ali Abro, learned counsel for petitioner argued there are no reasonable grounds to believe they committed the alleged offence under Section 9 (c) of the Sindh Control of Narcotic Substances Act, 2024. Learned counsel argues that the FIR was registered maliciously at the behest of a politically influential person in retaliation for a peaceful protest over water scarcity. The counsel

claims no narcotics were recovered from their exclusive possession, the alleged arrest and recovery were staged at the police station, and the FIR suffers from legal defects—particularly the absence of independent mashirs in a densely populated area, in violation of Section 103 Cr.P.C. Furthermore, the counsel also stress that no video recording was made as required under Section 17(2) of the amended Act. He alleges that all witnesses are police officials with vested interests, there was no corroborative evidence, and that their implication is politically motivated and fabricated. Learned counsel highlights petitioners are clean antecedents, local residence, and willingness to cooperate, contending that bail should not be withheld as a form of punishment, especially since wrongful incarceration is irreparable if they are later acquitted. Hence, he seeks bail on grounds of further inquiry, mala fide, and lack of credible evidence.

5. Mr. Siraj Ahmed Bajarani, the learned Assistant Prosecutor General (APG) opposes the bail, arguing that the Petitioners were caught red-handed with commercial quantities of charas under Section 9 (c) of the Sindh CNS Act, 2024, attracting the prohibitory clause. The recovery was lawfully made on credible spy information, with all legal formalities duly observed, including proper documentation and dispatched for chemical analysis. The absence of private mashirs is explained by public reluctance in narcotics cases and the testimony of police officials cannot be discarded solely on that basis. Allegations of political victimisation are termed baseless and unsubstantiated. The APG contends that while video recording under Section 17 (2) is desirable, its absence is not fatal to the prosecution

case. Given the gravity of the offence, the quantity of narcotics recovered and the statutory presumption of guilt, the Petitioners have failed to establish grounds for further inquiry, and therefore are not entitled to the concession of bail.

6. Heard. Record Perused.

7. It becomes pertinent to observe that **Section 35** of the Act comprises two distinct limbs. The first limb, which pertains to the exclusion of the grant of bail, in our considered view, appears to have been enacted with the intent of addressing the alarming rise in drug-related offences within society. This legislative restriction seems designed as a deterrent, aimed at combating the growing menace of drug trafficking and curbing the spread of narcotic substances. Recent high-profile arrests—such as that of a young individual named Armaghan, which has garnered extensive media coverage—underscore the urgency and gravity of the drug crisis that necessitates such stringent measures. The second limb, encapsulated in sub-section (2) of Section 35, stipulates that ***"the trial court shall conclude the trial within a period of six months."*** This provision reflects the legislature's intent to ensure that the Special Courts—yet to be established by the Provincial Government—proceed expeditiously with the adjudication of narcotics cases.¹ The object is to safeguard the rights of the accused, particularly those who may have

¹ The urgent need of such special court was also emphasized by Muhammad Karim Khan Agha, J in Syed Sahir Hassan v. P.O Sindh & others [CP No. D-937 of 2025] as :

"Accordingly a copy of this order shall be sent to the Chief Secretary and Secretary Law, government of Sindh, who shall ensure that special Courts under the aforesaid Act are established immediately and the Judges for such Courts shall be appointed in accordance with law expeditiously so that these cases can be tried and the petitioner and other may not left languishing in jail without any resource"

been falsely or maliciously implicated, by preventing prolonged incarceration without trial. Thus, while the first limb addresses deterrence and public safety, the second seeks to balance these aims with procedural fairness and timely access to justice.

8. It also becomes overarchingly significant to elaborate upon the scope and legislative intent of Section 17 of the Act. This provision predominantly addresses situations where no prior arrest or search warrant has been obtained, yet the narcotics force has credible information suggesting the presence of prohibited substances “*concealed in any building, place, premises or conveyance.*” In such circumstances, the law recognises the urgency and permits immediate action; however, to prevent abuse of this discretion, Section 17 (2) mandates that “*video recording of all raids, seizures, inspections and arrests shall be made by the officer in charge of such operation.*” A narrow or isolated reading of Section 17(2) would undermine the safeguards envisioned by the legislature within the broader framework of Section 17. The true purpose behind such mandatory video recording, particularly in warrantless situations, is not only to validate the claimed recovery of narcotic substances but also to ensure transparency, accountability and credibility in the actions of the law enforcement agencies. It serves as a check on the arbitrary exercise of power and provides evidentiary assurance that the recovery was made from the accused, and not planted subsequently. In our respectful view, Section 17(2) ought to be interpreted purposively and in consonance with the growing jurisprudential need to balance public interest with individual rights. Given the surge in both drug abuse

and alleged misuse of authority by enforcement personnel, this statutory requirement assumes critical importance. Video footage or photographic evidence should ideally capture the accused, the recovered substance, the precise location of recovery and the presence of responsible officers at the time of *Mashirnama* preparation. This procedural safeguard becomes an indispensable tool in separating genuine prosecutions from those tainted with *mala fides*. The above proposition finds authoritative backing in the observation of the Honourable Supreme Court in the case of **Zahid Sarfraz Gill**², where the Court emphasised the evidentiary value and procedural sanctity of visual documentation during recovery. This principle was subsequently reaffirmed in the case of **Muhammad Abid Hussain**³,

² Zahid Sarfaraz Gill v. the State [2024 SCMR 934]: Qazi Faez Isa, CJ, "6. In narcotic cases the prosecution witnesses usually are ANF personnel or policemen who surely would have a cell phone with an in-built camera. personnel of those arrested with narcotic substances generally there are only a few witnesses, and most, if not all, are government servants. However, trials are unnecessarily delayed, and resultantly the accused seek bail first in the trial court which if not granted to them is then filed in the High Court and there too if it is declined, petitions seeking bail are then filed in this Court. If the police and ANF were to use their mobile phone cameras to record and/or take photographs of the search, seizure and arrest, it would be useful evidence to establish the presence of the accused at the crime scene, the possession by the accused of the narcotic substances, the search and its seizure. It may also prevent false allegations being levelled against ANF/police that the narcotic substance was foisted upon them for some ulterior motives.

9. Copy of this order be sent to the Secretary Ministry of Narcotics Control, Government of Pakistan, Director-General, Anti-Narcotics Force, the Secretaries of the Home Departments of all the provinces, Inspector-Generals of Police of all the provinces and of the Islamabad Capital Territory. They may also consider whether they want to amend the ANF/Police rules to ensure making video recordings/ taking photographs whenever possible with regard to capturing, preserving and using such evidence at trial."

³ **Muhammad Abid Hussain v. The State [2025 SMCR 721]; Muhammad Hashim Khan Kakar, J**, "5. At the very outset, it would be relevant to state that the Act of 1997 prescribes severe punishments for the possession and, sale of narcotic substances. Given the gravity of the penalties, the standard of proof required to establish guilt must be correspondingly high. The prosecution must demonstrate beyond reasonable doubt that the petitioner was in possession of narcotic substance and that it was intended for sale. Article 164 of Qanun-e-Shahadat Order, 1984 emphasizes the importance of modern devices and techniques in the collection of evidence. It provides that evidence obtained through modern devices, such as video recordings, should be given due weight in judicial proceedings. This provision underscores the need for law enforcing agencies to adopt contemporary methods to ensure the accuracy and reliability of evidence. In this regard, in a criminal case titled *Zahid Sarfaraz Gill v. State (2024 SCMR 934)*,

wherein the Court once again underscored the indispensable role of video recording in ensuring fair investigation and protecting the rights of the accused. Hence, Section 17(2) should not be viewed as a mere procedural formality but as a vital element of lawful prosecution under the Control of Narcotic Substances regime—anchored in fairness, due process and judicial oversight. More so, Sections 16, 17 and 18 under Chapter-III of the Act are interconnected with each other. It is also pertinent to mention here that as Section 17 (1) of the Act, provides that the powers of entry, search, seizure and arrest without warrant, *whether in some premises or in public place*, are vested to an officer not below the rank of Inspector of Narcotic Control or equivalent authorized by Director General Narcotics Control Sindh.

9. The principle emerging that the grant of bail is not to be mechanically denied solely on the basis of the quantity of the recovered substance but must instead be assessed in light of the overall facts and circumstances of the case, including the nature of evidence, procedural compliance, and the legal principles governing bail.

this Court had granted bail after arrest to an accused carrying 1833 grams of charas which, as per the table in section 9(1) of the Act of 1997, comes under clause (c) of its third category and prescribes a minimum imprisonment of nine years and a maximum of fourteen years and fine, on the ground that why the police and members of the Anti-Narcotics Force do not record or take photographs when search, seizure and/or arrest is made. Article 164 of the Order, 1984 specially permits the use of any evidence that may have become available because of modern devices or techniques, and its Article 165 overrides all other laws. This Court had sent the copy of the order ibid to the Secretary, Ministry of Narcotics Control, Government of Pakistan, Director General Anti-Narcotics Force, the Secretaries of the Home Departments of all Provinces, Inspector Generals of Police of all the provinces and of the Islamabad Capital Territory to consider whether they want to amend the ANF/Police rules to ensure making video recordings/taking photographs whenever possible with regard to capturing, preserving and using such evidence at trial."

10. If the prosecution successfully demonstrates, even at the bail stage, a credible and convincing account of recovery from the possession of the accused, the burden then shifts to the accused to dislodge such presumption through tangible and cogent material, even for the limited purpose of seeking concession of bail. This rebuttal, however, need not be conclusive at this stage but must raise substantial doubts in the prosecution's version sufficient to bring the case within the ambit of *further inquiry* under Section 497 (2) Cr.P.C. It is a settled principle that at the bail stage, the Court is not required to conduct a mini-trial, but a tentative assessment of the available material is necessary to weigh the plausibility of the respective claims. Thus, both the prosecution and the defence bear the obligation to assist the Court in establishing or controverting the alleged recovery, in order to secure the relief sought or to justify its denial. In essence, the quantum of the narcotic substance, though relevant, is not an absolute bar to the grant of bail. The question ultimately hinges upon the *prima facie* integrity of the recovery proceedings and the likelihood of the accused being connected to the offence in the manner alleged.

11. In the present matter, the alleged recovery of 1120 grams of charas squarely attracts the provisions of 9 (i) 3 (c) of the Act. The said provision prescribes a sentence of imprisonment which may extend to fourteen years, but shall not be less than nine years, along with a fine not exceeding five hundred thousand rupees and not less than one hundred thousand rupees. It is pertinent to underscore that the minimum punishment provided—being nine years—falls below

the threshold of the prohibitory clause as envisaged under Section 497(1) Cr.P.C., which mandates a minimum sentence of ten years or more. Consequently, the offence, on the face of it, does not fall within the prohibitory clause. Furthermore, the alleged arrest took place during daylight hours in a mango orchard, with the prosecution asserting that the contraband was being sold to the general public. It is therefore implausible that no private individuals were present who could have been associated as mashirs to witness the alleged recovery proceedings. The application of Sections 16, 17 (2) and 18 of Chapter-III are interlinked with each other; reliance is placed upon ***Zahid Sarfraz Gill and Muhammad Abid Hussain*** case (supra) assumes paramount significance. This provision mandates video recording and/or photographic documentation of all seizures, inspections, and arrests conducted without a warrant. Such evidentiary safeguards were essential in the present case to validate the lawfulness of the recovery and the manner of arrest. The police, however, have failed to adhere to these mandatory procedural requirements, thereby casting serious doubt on the veracity of the prosecution's version. In view of these lapses and contradictions, the case clearly falls within the ambit of *further inquiry* as contemplated under Section 497 (2) Cr.P.C. It is equally important to reiterate the settled principle laid down by the Honourable Supreme Court in the case of **Muhammad Arshad**⁴, wherein it was held that benefit of doubt may be extended even at the bail stage, if warranted by the facts and circumstances of the case.

⁴ Muhammad Arshad v. The State (2022 SCMR 1555)

12. In view of the foregoing analysis, it is manifest that the prosecution has failed to produce video or photographic evidence as mandated under Section 17 (2) of the Sindh Control of Narcotics Substances Act, 2024, which casts serious doubt upon the legality of the recovery and arrest. The absence of private mashirs, despite the alleged incident occurring in a public and accessible area, and the lack of independent corroboration, further undermine the credibility of the prosecution's case. Moreover, the minimum sentence for the alleged offence does not fall within the prohibitory clause, and the petitioners have made out a case that calls for further inquiry under Section 497(2) Cr.P.C. In the interest of justice, procedural fairness, and to prevent potential abuse of prosecutorial powers, we are of the considered view that *prima facie*, it appears that the petitioners are entitled to the concession of bail. Accordingly, the petition is ***allowed***. The petitioners, Syed Amjad Shah son of Syed Ghulam Rasool Shah and Syed Wasayo Shah son of Misri, shall be released on bail upon furnishing solvent surety in the sum of Rs. 200,000/- (Rupees Two Hundred Thousand only) each and a personal bond in the like amount to the satisfaction of the learned trial Court.

13. Needless to say, any observation made hereinabove is tentative in nature and shall not influence the outcome of the trial.

JUDGE

JUDGE

****Abdullahchanna/PS****