

HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 910 of 2025

(Azam Ali Shaikh 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. Muhammad Ayaz Shaikh, Advocate for petitioner.

ORDER

Arbab Ali Hakro, J. – Through this constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the Petitioner seeks post-arrest bail in respect of FIR No.01/2024 dated 23.02.2024, registered at Police Station ANF Sukkur, under the provisions of the repealed Control of Narcotic Substances Act, 1997 (“**Act of 1997**”).

2. Heard learned counsel for the Petitioner at length and perused the record. It is an admitted position that the subject FIR was registered against the Petitioner on 23.02.2024, well 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of the Sindh Control of Narcotic Substances Act, 2024 (“**Act of 2024**”), which came into force on 29.10.2024 and repealed the Act of 1997, to the extent of the Province of Sindh. The Petitioner’s initial attempt to secure bail was through Criminal Bail Application No. S-369/2024, filed before a regular bench of this Court, which was dismissed on merits on 22.07.2024. Thereafter, the Petitioner approached the Trial Court again after the partial recording of prosecution evidence, and the application was again dismissed on 09.04.2025. The subsequent Post-Arrest Bail Application No. S-400/2025, filed before the regular bench, was not pressed, leading to the filing of the present constitutional petition.

3. 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FIR, and whether such legislation operates retrospectively to displace the procedural mechanisms available under the repealed statute.

4. 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) *ibid*, 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preserves, *inter alia*, rights, liabilities, proceedings, and remedies that accrued or were initiated under the repealed Act.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 subsection (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 Trial Court or regular bench as the case may be.

5. 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.

6. The Petitioner has sought to anchor the maintainability of the present petition on the Full Bench decision of this Court in the case of **Syed Sahir Hasan**¹. While that judgment indeed affirms the jurisdiction of the Constitutional Bench to entertain bail under Article 199 in the wake of Section 35 of the Act of 2024, the key distinguishing feature is that the offence in that case arose ‘after’ the promulgation of the Act of 2024. The application of the **Sahir Hasan** precedent to the instant case is, therefore, legally untenable. The reasoning of the Full Bench was tailored to offences under the new law, which bars explicitly subordinate courts. That ruling cannot be transposed wholesale to cases arising under a repealed statute where proceedings are protected under a saving clause. Accordingly, the Petitioner’s reliance on the said judgment is wholly misplaced. The Court’s constitutional jurisdiction is not meant to be invoked where an efficacious remedy exists under ordinary law, and the High Court’s regular bench is the competent forum.

¹ C.P. No. D-937/2025 (Syed Sahir Hasan v. Province of Sindh & Others) decided on 22.04.2025

7. The deliberate withdrawal of Bail Application No. S-400/2025 before the regular bench and resort to constitutional jurisdiction appears to be a calculated procedural bypass. Such forum shopping undermines judicial discipline and cannot be countenanced under constitutional jurisprudence, which requires the exhaustion of adequate alternate remedies.

8. 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), 35 of the Act of 2024 does not apply retrospectively and cannot oust the jurisdiction of the regular bench. This Constitutional Petition is not maintainable before this Court. Resultantly, the instant petition is hereby **dismissed** in *limine* as being not maintainable, along with pending miscellaneous applications.

J U D G E

J U D G E

Abdul Basit