

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Constitution Petition No.D-535 of 2025

Before:

*Mr. Justice Arbab Ali Hakro;
Mr. Justice Abdul Hamid Bhurgri.*

Petitioner : Mst. Nadra w/o Muhammad @ Kuraro Abro
through M/S Habibullah Ghouri and Ahmed
Bux Abro, Advocates.

Respondent : The State.
through Mr. Munwar Ali Abbasi, Assistant
Advocate General Sindh,
Mr. Aitbar Ali Bullo, Deputy Prosecutor
General Sindh.

Date of Hearing: 25.06.2025.
Date of Order. 25.06.2025.
Date of reasons. 26.06.2025

ORDER

Abdul Hamid Bhurgri, J.- The petitioner being an accused seeks post arrest bail in the crime No.20/2025 for offence punishable Under Section 9(1)-3(c) of the Sindh Control of Narcotic Substances, Act, 2024 (hereinafter it will be referred as Act, 2024) of PS Baqapur district Larkana.

2. According to the First Information Report (FIR), on 23.05.2024 at approximately 0500 hours, the complainant ASI Habibullah Jeho, accompanied by PCs Wazir Ali, Sikander Ali, and DPC Qadir Bux, departed the Police Station for routine patrolling in accordance with entry No.23. After conducting patrol duties at various locations, upon reaching Unar Chowk, the complainant received confidential intelligence indicating that one Mst. Nadra was allegedly selling charas outside her residence in Village Baqapur. Acting upon the information, the police party included LPC Salman Dahani and proceeded towards the identified location. At approximately 0600 hours, upon reaching the premises, they observed a woman, later identified as Mst. Nadra, seated on a cot with a child. Upon noticing the police presence, she allegedly attempted to flee but was apprehended through the assistance of LPC Salman Dahani. Owing to the unavailability of private witnesses, LPC Salman Dahani and PC Wazir Ali were nominated as official mashirs. A search was conducted through

female personnel, during which a black shopper was recovered from her right hand. Upon opening, the bag was found to contain two slabs and one small piece of charas, cumulatively weighing 2000 grams. The contraband was sealed at the spot. The accused further disclosed that the child accompanying her was her infant son, Sartaj, aged approximately three months. A memo of arrest and recovery was duly prepared in accordance with procedure, and both the accused and recovered property were brought to the Police Station, where the FIR was formally lodged.

3. Learned counsel for the petitioner contended that the alleged recovery was falsely foisted upon the petitioner, who is a woman and there is no criminal record of the petitioner. It was submitted that the entire prosecution case rests solely upon the testimony of police officials, with no independent witness or corroborative evidence. Despite the alleged incident having occurred in a densely populated area, no private mashir was associated. Furthermore, no videographic or technological evidence has been produced to substantiate the recovery. On these grounds, learned counsel prayed for the grant of post-arrest bail.

4. In rebuttal, the learned Additional Prosecutor General opposed grant of the bail arguing that the name of applicant is transpired in the FIR and a considerable contraband was recovered from his exclusive possession and, therefore, he is not entitled for concession of bail.

5. We have heard the counsel for the parties and have given record our anxious consideration.

6. Although Section 35(1) of the Sindh Narcotic Substances Act, 2024, places a bar on the grant of bail by trial courts, such embargo does not preclude the constitutional jurisdiction of this Court under Article 199 of the Constitution. In circumstances where no alternate statutory remedy is available, and the accused is left without recourse, a constitutional petition for bail is maintainable to safeguard fundamental rights and ensure that the due process of law is upheld. The section 35(1) of the Act, 2024 reads as under:-

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

7. In view of the exceptional nature of the statutory bar and in the absence of any efficacious alternative remedy, this petition is held to be maintainable. Reliance is placed on the authoritative judgment of the Honourable Supreme Court in ***Khan Asfandiyar Wali v. Federation of Pakistan (PLD 2001 SC 607)***.

8. A tentative assessment of the material available on record reflects that the alleged recovery falls under Section 9(1)-3(c) of Sindh Control of Narcotics Substance, Act, 2024 carries imprisonment which may extend to fourteen years but shall not be less than nine years and it is settled law that at bail stage lesser punishment is to be considered. The applicant is a woman and has no previous criminal record. Her case thus warrants sympathetic consideration. The alleged recovery was effected from thickly populated area i.e. village Baqapur, however, no independent witness was associated with the recovery proceedings, despite the site being one regularly frequented by members of the general public. The non-association of private mashirs in such circumstances undermines the credibility of the prosecution case. It is now well settled principle that where the prosecution's case hinges entirely on police testimony, uncorroborated by natural witnesses, the benefit of doubt is to be extended at the bail stage. Reliance is placed on ***2022 SCMR 1555, Muhammad Arshad v. the State***.

9. The absence of electronic evidence such as video recording and the questionable competence of the complainant officer further weaken the prosecution's stance. The Honourable apex Court in the case of ***Muhammad Abid Hussain v. the State reported in 2025 SCMR 721*** has emphasized the indefensible nature of procedural fairness and technical evidence in narcotics cases. It was held that the absence of video footage and independent witness seriously compromise the case of prosecution. Furthermore, in the case of ***Zahid Sarfaraz Gill v. the State reported in 2024 SCMR 934***, the Court has emphasized on video recording in narcotic cases.

10. Where the statute excludes the right of bail, strict adherence to legal procedures and statutory safeguards becomes all the more

essential. Any lapse in compliance undermines the fairness of the process and may lead to miscarriage of justice. The greater the restriction on liberty, the stricter the obligation on authorities to act within the bounds of law.

11. These factors bring the case within the domain of further inquiry. Accordingly, this petition is allowed and the petitioner is admitted to post-arrest bail, subject to his furnishing solvent surety in the sum of Rs.1,00,000/- (Rupees one lac) with a P.R bond in the like amount to the satisfaction of learned Additional Registrar of this Court.

12. After furnishing the required surety, the petitioner is directed to appear before the learned trial Court on each and every date of hearing without fail. In case of non-appearance or violation of any of the conditions of bail, the learned trial Court shall be at liberty to cancel the bail of the petitioner.

13. Needless to state, the observations hereinabove are tentative in nature and shall not prejudice the trial court in his adjudication of the matter on merits.

14. Above are the reasons of our short order dated 25.06.2025.

Jude

Judge