

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Constitution Petition No.D-475 of 2025

Before:

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

Petitioner : Ashraf @ Madhosh s/o Gul Hassan Chana,
through Mr. Saeed Ahmed Panhwar,
Advocate.

Respondents : Province of Sindh and two others,
through Mr. Liaquat Ali Shar, Additional
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, who is an accused of crime No.22/2025 for offence punishable Under Section 9(1)-3(b) of the Control of Narcotic Substances (Amendment) Act, 2022 of PS Faridabad, district Dadu seeks post arrest bail.

2. As per the First Information Report (FIR), on 10.05.2025 at approximately 0930 hours, the complainant ASI Hoat Khan Janwri, along with his subordinates HC Bilawal Khan, PC Arif Ali, and DHC Ali Gohar, departed the police station for patrolling duties in pursuance of entry No.6. Upon reaching the vicinity of Sodhe Bridge, Ring band, Faridabad City, at about 1000 hours, the police party observed an individual carrying a black shopper who, upon seeing the police, allegedly attempted to flee. He was apprehended, and a search of the shopper revealed three pieces of contraband. Upon inquiry, the accused disclosed his name as Ashraf alias Madhosh. A body search resulted in the recovery of currency, one note of Rs.100/- and another of Rs.50/- amounting to a total of Rs.150/-. The recovered contraband, identified as charas, was weighed at 530 grams. From each of the three pieces, 20 grams were separately sealed for chemical analysis, while the remaining charas, along with the recovered currency, was sealed collectively. A formal memo of arrest and

recovery was prepared in the presence of official mashirs HC Bilawal Khan and PC Arif Ali. Subsequently, both the accused and the seized articles were transported to the police station, where the present FIR was lodged.

3. Learned counsel for the petitioner argued that the recovery in question was maliciously foisted upon the petitioner due to his refusal to comply with a bribe demand made by the police officials. It was further submitted that the alleged quantity recovered is meagre in nature and falls outside the scope of the prohibitory clause. He contended that the prosecution's case rests solely upon the testimony of police personnel, lacking any form of independent corroboration, notwithstanding that the incident purportedly occurred in a densely populated area. Furthermore, no technological or videographic evidence has been produced to substantiate the recovery. In light of these contentions, learned counsel prayed for the grant of post-arrest bail.

4. Conversely, the learned Additional Prosecutor General opposed the bail application but did not contest the assertion that the quantity of the recovered narcotic substance falls outside the prohibitory clause, nor did he dispute the absence of independent witnesses.

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

6. The right of access to justice is an inviolable constitutional principle embedded within the broader framework of fundamental rights, including the right to life and liberty guaranteed under Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973. In the present case, the petitioner has approached this Court through constitutional jurisdiction due to the statutory embargo on bail created by Section 35(1) of the Act, 2024. This provision imposes an absolute bar on the jurisdiction of the ordinary criminal courts to grant bail in narcotics cases, thereby depriving the accused of any meaningful statutory forum to seek relief. In such exceptional circumstances, where the statutory regime forecloses ordinary judicial recourse and raises serious concerns over prolonged pre-trial detention without adjudication on merits, the constitutional

jurisdiction of the High Court remains open to prevent injustice. The superior courts have held that constitutional jurisdiction is not barred where the petitioner is left remediless due to legislative constraints. 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. Therefore, in view of the exceptional nature of the statutory restriction and the absence of any effective legal remedy, this petition is held to be maintainable. Reliance is placed on the judgment of the Honourable Supreme Court in case of ***Khan Asfandiyar Wali v. Federation of Pakistan (PLD 2001 SC 607)***.

8. Upon perusal of the record, it emerges that the impugned FIR was registered on 10.05.2025 under the Control of Narcotic Substances Act, 1997 (Amendment) Act, 2022, notwithstanding the fact that the Sindh Control of Narcotic Substances Act, 2024 ("Act of 2024") had already come into force on 29.10.2024, thereby repealing the earlier legislation. It is pertinent to note that by virtue of Section 35(1) of the Act of 2024, the applicability of Sections 496 and 497 of the Code of Criminal Procedure stands expressly excluded, effectively ousting the jurisdiction of subordinate courts in matters pertaining to bail in narcotics-related offences. Given that the offence in question occurred after the promulgation of the Act of 2024, yet the FIR was erroneously lodged under the repealed 2022 statute, the correct legal position necessitates application of the 2024 Act. Notwithstanding, such procedural discrepancies in FIR registration are curable during the investigative process, and the Investigating Officer (I.O.) retains the authority to amend or rectify the charges in accordance with law. Thus, the constitutional jurisdiction remains competent to entertain challenges regarding the correct statutory applicability of the FIR. Moreover, as the final challan has not yet been submitted by the I.O., the legal framework remains flexible at this stage. It is further noted that the punishment prescribed under both statutes is identical in nature ranging from a minimum of five years to a maximum of nine years' imprisonment. Therefore, the

petitioner shall remain at liberty to seek an appropriate remedy, should any jurisdictional objection subsequently arise.

9. The alleged recovery carries imprisonment which may extend to nine years but shall not be less than five years and it is settled law that at bail stage lesser punishment is to be considered, accordingly, alleged recovery from the petitioner does not fall within the prohibited degree. Notably, the recovery was shown to have been affected from a busy road, yet no independent witness was cited or associated at the time of recovery. 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 the case of ***Muhammad Arshad v. The State (2022 SCMR 1555)***.

10. 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 (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 (2024 SCMR 934)***, the Court has emphasized on video recording in narcotic cases.

11. 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.

12. 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.50,000/- (Rupees fifty thousand) with a P.R bond in the like amount to the satisfaction of learned Additional Registrar of this Court.

13. 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.

14. 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.

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

Judge

Judge