

**IN HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

C.P No. D-700 of 2025

[Nazeer Ali @ Bago v. SIP Manzoor Hussain Ghangro & another]

Before:

Mr. Justice Arbab Ali Hakro

Mr. Justice Riazat Ali Sahar

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| Counsel for Petitioner: | Mr. Zakir Hussain Laghari, Advocate |
| Counsel/ Representative for Respondents: | Mr. Nazar Muhammad Memon, A.P.G. Sindh. |
| Date of Hearing | 29.05.2025 |
| Date of Order | 29.05.2025 |

O R D E R

RIAZAT ALI SAHAR, J. Through this order, we intend to dispose of captioned petition, wherein the following relief is sought:

*“a. That this Honourable Court may be pleased to admit the petitioner on post arrest bail in the present case upon furnishing solvent surety to the satisfaction of the Honourable Court.
b. 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. Furthermore, in NAB Ordinance, 1999, the opportunity of bail was not provided by the Statute against the fundamental rights under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 and same was discussed by the Honourable Supreme Court of Pakistan in the case of *Khan Asfandiyar Wali v. Federation of Pakistan [PLD 2001 SC 607]*, the Honourable Supreme Court held that the petitions were maintainable under Article 184 (3) of the Constitution as they raised issues of public importance relating to the enforcement of fundamental rights. The constitutionality of the NAB Ordinance, 1999 was challenged for violating several constitutional provisions, particularly Articles 4, 9, 10, 12, 18, 23, 24, 25, 175, 202, and 203. The Court found that the Ordinance created a parallel judicial system by assigning judicial powers to the executive, thus infringing upon the principle of separation of powers. Notably, Section 9 (b) of the Ordinance, which ousted the jurisdiction of the High Courts to grant bail, was declared **ultra vires** to the Constitution, reaffirming that **High Courts retain such jurisdiction under Article 199**. The Court directed that Accountability Court Judges must be serving District and Sessions Judges under the supervisory control of the respective High

Courts. It also clarified that the offence of "willful default" under Section 5(r) was a continuing one and not retrospective, hence not violative of Article 12. While some provisions were struck down, the Supreme Court applied the doctrine of severability and recommended necessary amendments rather than invalidating the entire Ordinance. Additionally, various directions were issued to ensure judicial independence, due process, and accountability reforms. The affirmation of **High Courts' powers under Article 199**, including the authority **to grant bail**, is explicitly stated in paragraph (r), where the Court held that **"Section 9(b) of the Ordinance to that extent is ultra vires the Constitution... The superior Courts under Article 199 of the Constitution remain available to their full extent..."**

4. Tersely, the allegation against petitioner is that on 23.04.2025, the complainant, serving as SIP at PS Husri/Seri Hyderabad, along with subordinate staff, proceeded on patrol in government vehicle SPC-939 as per roznamcha entry No.23. At around 2015 hours, at Mir Ji Khuri, they saw two persons sat left side of road having plastic shoppers; they stopped the vehicle, succeeded to apprehend one person while the other by throwing his peach color shopper succeeded to flee upon sighting the police. The arrested accused was Nazeer Ali @ Bago, from whom they recovered **1840** grams of charas. While escaped accused was Sultan s/o Ghazi Pathan, whose thrown plastic shopper was containing 1263 grams of charas. The arrested accused confessed that he and escaped accused are selling the

charas for their livelihood. Such mashirnama of arrest and recovery was prepared. The contraband was seized for chemical examination. The accused and recovered material were transported to the police station, where FIR was registered under Section 9 (1) (3) (c) of the Sindh Control of Narcotic Substances Act, 2024.

5. Mr. Zakir Hussain Laghari, learned counsel for petitioner argued that there are no reasonable grounds to believe that the petitioner has 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 instance of accused against whom the brother of petitioner has lodged FIR bearing Crime No.166 of 2012 for the offence under section 302, 324 PPC, 147, 148, 149, 114, 337-H (ii), 452, 504 PPC. The counsel claims no narcotics were recovered from their exclusive possession, the alleged arrest and recovery both were staged one 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 the implication of petitioner is false at the instance of said accused in the above mentioned crime. Learned counsel highlights that the petitioner having clean antecedents, local residence, and willingness to cooperate with investigation as well as

trial, contending that bail should not be withheld as a form of punishment, especially since wrongful incarceration is irreparable if he is later acquitted. Hence, he seeks bail on grounds of *further inquiry, mala fide, and lack of credible evidence.*

6. Mr. Nazar Muhammad Memon, the learned Additional Prosecutor General, Sindh opposes the bail, arguing that the Petitioners were caught red-handed with commercial quantities of charas under Section 9 (3) (1) (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 dispatch 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 false implication 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 Petitioner has failed to establish grounds for further inquiry, and therefore is not entitled to the concession of bail.

7. Heard. Record Perused.

8. The Court emphasizes that Section 35 of the Sindh Control of Narcotic Substances Act, 2024, performs two crucial functions: its primary aim is to curb narcotics-related offences by limiting the grant of bail in grave cases, while its secondary objective is to ensure that trials are conducted swiftly—within six months—to

prevent prolonged pre-trial detention of accused persons. Complementing this, Section 17 (2) introduces an important procedural safeguard by mandating video recording of warrantless raids and recoveries, thereby fostering transparency and minimizing potential misuse of authority. This safeguard has been judicially endorsed in *Zahid Sarfraz Gill v. The State [2024 SCMR 934]* and *Muhammad Abid Hussain v. The State [2025 SCMR 721]*. The Court further clarifies that although the quantity of recovered contraband may bring the matter within the scope of the prohibitory clause under Section 497 Cr.P.C., such a clause does not impose an inflexible bar on bail. The determining consideration is whether the prosecution has presented a prima facie credible case regarding the recovery, and whether the defence has succeeded in raising plausible doubt sufficient to warrant further inquiry under Section 497 (2) Cr.P.C.—without converting the bail proceedings into a substitute for trial. A more detailed exposition of this legal proposition can be found in *Peer Bux v. The State and others [C.P. No. D-725 of 2025, High Court of Sindh, Circuit Court Hyderabad]*.

9. In the present matter, the alleged recovery of 1840 grams of charas squarely attracts the provisions of Section 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. It is therefore implausible that no private individuals were present who could have been associated as mashirs to witness the alleged recovery proceedings. While it is settled law that Section 103 Cr.P.C. is rendered inapplicable to offences under the CNS Act, owing to its exclusion by virtue of Section 25 of the said Act, the application of Section 17 (2) 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 v. The State [2022 SCMR 1555]*, 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.

10. 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. **More so, sections 16, 17 and 18 under Chapter-III of the Act are interconnected with each other.** Moreover, the minimum sentence for the alleged offence does not fall within the prohibitory clause, and the petitioner has made out a case that calls for further inquiry under Section 497(2) Cr.P.C. *Prima facie*, it appears that the material on record does not connect petitioner to the commission of offence. In the interest of justice, procedural fairness, and to prevent potential abuse of prosecutorial powers, we are of the considered view that the petitioner is entitled to the concession of bail. Accordingly, the petition was ***allowed***. The petitioner, Nazeer Ali @ Bago son of Haji Muhammad Kalyar, was ordered to be released on bail upon furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand only) and a personal bond in the like amount to the satisfaction of the learned trial Court through our short order dated 29.05.2025. These are the reasons for our above said short order.

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

JUDGE

JUDGE