

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

C.P No. D-743 of 2025

[Ghulam Asghar v. Investigating Officer & another]

Before:

Mr. Justice Arbab Ali Hakro

Mr. Justice Riazat Ali Sahar

Counsel for Petitioner:	Mr. Manzoor Ali Siyal, Advocate
Counsel/ Representative for Respondents:	Mr. Shewak Rathore D.P.G. Sindh.
Date of Hearing	22.05.2025
Date of Order	22.05.2025

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 grant bail to the petitioner in the above crime/section.
b. Any other relief which this Honourable Court may deem fit and proper 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. Briefly, the allegation against the petitioner is that on 28.04.2025, the complainant, serving as SIP at PS Bhitai Nagar Hyderabad, along with subordinate staff, proceeded on patrol in government vehicle SPD-039 as per roznamcha entry No.09. While patrolling within the jurisdiction and reaching Chaandi Goth, they received spy information and moved to Railway Station Road near Alamdar Chowk at about 1300 hours. There, they saw a suspicious person carrying a black bag and apprehended him. Due to the non-availability of private mashirs, PC Mohsin Magsi and Muhammad Sohaib acted as official witnesses. The suspect disclosed his name as Ghulam Asghar s/o Abdul Ghaffar Dahar. On personal search, a black REDMI mobile phone and a currency note of Rs.100 note were recovered. Upon inspecting the black bag, 144 grams of charas was found. The contraband was sealed for chemical analysis, other items

were noted in the mashirnama and the accused along with recovered material was taken to the police station, where FIR was lodged under Section 9 (1) (3) (b) of the Sindh Control of Narcotic Substances Act, 2024.

5. Mr. Manzoor Ali Siyal, learned counsel for petitioner argued there are no reasonable grounds to believe that the petitioner has committed the alleged offence under Section 9 (1) (3) (b) 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 the reasons the petitioner belongs to the opposite party. 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 petitioner 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 he is later acquitted. Hence, he seeks bail on grounds of further inquiry, mala fide, and lack of credible evidence.

6. Mr. Shewak Rathore, the learned Deputy Prosecutor General, Sindh opposes the bail, arguing that the Petitioner was caught red-handed with commercial quantities of charas under Section 9 (1) (3) (b) 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 political victimisation are termed baseless and unsubstantiated. The DPG 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 *Syed Amjad Shah and another v. The State and others [C.P. No. D-797 of 2025, High Court of Sindh, Circuit Court Hyderabad]*.

9. In the present matter, the alleged recovery of **144 grams** of charas squarely attracts the provisions of **Section 9 (1) 3 (a) of the Act** whereby the quantity of charas is shown “**Up to 499 grams**” but not under **Section 9 (1) 3 (b) of the Act** whereby the quantity of charas is shown from “**500 grams to 999 grams**”. Section 9 (1) 3 (a) of the Act prescribes a sentence of imprisonment which may extend to five years, but shall not be less than ten months, along with a fine which may be up to sixty thousand rupees. It is pertinent to underscore that the minimum punishment provided—being ten months—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, Ghulam Asghar son of Abdul Ghaffar Dahar, was ordered to be released on bail upon furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand only) and a personal bond in the like amount to the satisfaction of the learned trial Court through our short order dated 22.05.2025. 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

****Abdullahchanna/PS****