

ORDER SHEET
**HIGH COURT OF SINDH CIRCUIT COURT,
MIRPURKHAS**

CP. No. D- 386 of 2025
[Mehar v. Province of Sindh & others]

BEFORE:

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Yousuf Ali Sayeed

Petitioner : Through Hussain Bux Mari, Advocate

Respondent : Through Mr. Ayaz Ali Rajpar Addl. A.G. &
Mr. Ghulam Abbas Dalwani A.P.G

Date of hearing
& Decision: 09.07.2025

ORDER

ADNAN-UL-KARIM MEMON J. - Petitioner Mehar seeks post-arrest bail in Crime No. 29 of 2025 registered at Police Station Khahi District Sanghar under Section 9(i) 3(A) of the Sindh Control of Narcotic Substances (SCNS) Act 2024.

2. The petitioner's counsel asserts the case is false and fabricated, arguing that the recovery of contraband is highly suspicious due to the absence of public witnesses, despite the alleged incident occurring in a thickly populated area with shops and a busy road; that even though Section 103 Cr.P.C. is excluded by Section 25 C.N.S.A., a public witness association is still necessary. All the cited witnesses are police officials raising concerns about the impartiality of the recovery; that the prosecution has not presented any evidence of a purchaser, currency used or specific purchased intoxicants, which are essential to prove the charge of sale and purchase; that the petitioner alleges his arrest was motivated by a personal grudge with the police; that the truthfulness of FIR's narrative is questionable and requires further inquiry to determine the petitioner's guilt; that the alleged offense does not fall under the prohibitory clause of Section 497 Cr.P.C., where bail is generally rule and refusal an exception; that the petitioner is confined in Sub Jail Khipro, and is no longer required for police investigation. He lastly prayed for bail.

3. Learned A.P.G has objected to the grant of bail to the petitioner on the ground that he was arrested at the spot and Charas was recovered from his possession; that the petitioner has failed to show any enmity and / or malafide on the part of police. Learned Additional A.G. adopted the arguments of learned APG. However, they both conceded that the petitioner has no previous criminal record.

4. Heard learned counsel for the parties and perused the record with their assistance and the case law cited at the bar.

5. The petitioner has been implicated in the subject crime on the allegation of recovery of 300 grams of charas; that currently the petitioner is in judicial custody and the matter is under investigation; that due to legal bar imposed by Section 35 of the SCNS Act 2024 and an order from the Honorable High Court of Sindh at Karachi (C.P No. D-937 of 2025, dated April 22, 2025), the Sessions Court lacks jurisdiction for bail applications under this Act. Consequently, the petitioner has no alternative remedy but to invoke the extraordinary constitutional jurisdiction of this Honorable Court under Article 199 of the Constitution of Pakistan, 1973.

6. We have noticed that the case of Ateebur Rehman v. The State (2016 SCMR 1424), which involved recovery of 1014 grams of heroin, and Aya Khan and another v. The State (2020 SCMR 350), which involved recovery of 1100 grams of heroin, and bail was granted by the Supreme Court. In principle, bail does not mean acquittal of the accused but only a change of custody from police to the sureties, who, on furnishing bonds, take responsibility to produce the accused whenever and wherever required to be produced. On the proposition above, we are fortified with the decision of Supreme Court in the case of Haji Muhammad Nazir v. The State (2008 SCMR 807).

7. Keeping in view the meager quantity of narcotics recovered, which carries a sentence of less than five years, and the admission that the petitioner has no prior criminal record, this Constitutional Petition for bail has force.

8. These are the reasons for our short order of even date, by which the Petition for bail was allowed and the Petitioner was granted post-arrest bail in Crime No. 28 of 2025, registered under Section 9(i) 3A of the Sindh Control of Narcotic Substances (SCNS) Act 2024, at PS Khahi, District Sanghar, subject to furnishing

solvent surety in the sum of Rs. 50,000/- and P.R. Bond in the like amount to the satisfaction of the trial Court.

9. The observation recorded hereinabove is tentative and shall not prejudice the case of either party at trial. However, the trial Court shall endeavor to examine the Complainant / his witnesses positively within a reasonable time. If the charge has not been framed, the same shall be framed before the date so fixed by the trial Court, and a compliance report shall be submitted through the Additional Registrar of this Court. The Additional Registrar shall ensure compliance with the order.

J U D G E

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