

IN HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P No. D-794 of 2025
[Nadeem @ Bhoora v. The State & others]

Before:
Mr. Justice Arbab Ali Hakro
Mr. Justice Riazat Ali Sahar

Counsel for Petitioner: Mr. Zahid Ali Khoso, Advocate

Counsels/ Representatives for Respondents: Mr Siraj Ahmed Bijarani, APG

Date of Hearing 27.05.2025

Date of Judgment 27.05.2025

JUDGMENT

RIAZAT ALI SAHAR, J. Through this judgment, 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. Tersely, the allegation against petitioner is that on 01.05.2025 at 2130 hours, ASI along with police staff, during routine patrol in Noorani Basti, Hyderabad, apprehended Nadeem alias Bhura, who was carrying a black bag. Upon search, 1070 grams of charas—two 500-gram strips bearing monograms “Anonymous 2024/2025” and a 70-gram piece—was recovered. Due to absence of private mashirs, police personnel acted as witnesses. The accused confessed to selling charas. The contraband was sealed for chemical analysis, and an FIR was registered under the Sindh Control of Narcotic Substances Act, 2024 and has duly registered a case against the arrested accused.

4. Mr. Zahid Ali Khoso, learned counsel for the petitioner, submits that there are no reasonable grounds to connect the petitioner with the alleged offence under Section 9 (c) of the Sindh Control of Narcotic Substances Act, 2024. He maintains that the FIR was lodged with ulterior motives, allegedly instigated by a politically powerful person in retaliation for the petitioner’s peaceful protest

against water shortage. It is asserted that no contraband was recovered from the petitioner's exclusive possession, and that both the arrest and recovery were staged within the premises of the police station. The counsel further points out significant procedural lapses in the FIR, particularly the omission of independent mashirs, despite the alleged incident taking place in a densely populated area—thereby violating the intent of Section 103 Cr.P.C. He also criticizes the prosecution's failure to comply with Section 17(2) of the amended Act, which mandates video recording of warrantless searches and recoveries. He stresses that all witnesses are police personnel who may harbour bias, and no neutral or independent corroboration has been brought forth, severely weakening the prosecution's case. Additionally, the petitioner's clean record, permanent residence, and cooperative stance are presented as factors indicating that continued incarceration would be punitive in nature, prior to any determination of guilt. The counsel argues that, in the event of acquittal, the petitioner would have suffered an irreversible deprivation of liberty. On these grounds—*mala fide* prosecution, absence of credible evidence, and the case being one of further inquiry under Section 497(2) Cr.P.C.—he prays that bail be granted.

5. Mr. Siraj Ahmed Bjarani, the learned Assistant Prosecutor General, vigorously opposes the petitioners' bail application, asserting that they were apprehended in possession of a commercial quantity of charas, which clearly brings the case within the ambit of Section 9 (c) of the Sindh Control of Narcotic Substances Act, 2024. He submits that the offence attracts the prohibitory clause

of Section 497 Cr.P.C., and the recovery was made pursuant to credible intelligence, in full compliance with the prescribed legal procedures, including proper documentation and immediate dispatch of the recovered substance for chemical analysis. The learned APG explains that the absence of private mashirs does not indicate any irregularity, as it is common for members of the public to avoid involvement in narcotics cases due to fear or reluctance. He contends that the evidence provided by police officers should not be disregarded merely due to their official status. The allegations of political victimisation, he argues, are entirely unfounded and not supported by any credible evidence. Although he acknowledges that video recording under Section 17 (2) of the amended Act serves as a valuable procedural safeguard, he maintains that its absence alone does not render the prosecution's case defective. Considering the serious nature of the charges, the large quantity of narcotics allegedly recovered, and the statutory presumption of guilt applicable in such cases, he submits that the petitioners have failed to establish any valid grounds to warrant further inquiry. Consequently, he concludes that they are not entitled to the benefit of bail.

6. Heard. Record Perused.

7. The Court observes that Section 35 of the Sindh Control of Narcotic Substances Act, 2024, serves a dual purpose: firstly, it seeks to curb serious drug offences by restricting the grant of bail; secondly, it ensures the right to a prompt trial by mandating that proceedings be concluded within six months, thereby protecting the

accused from prolonged pre-trial detention. To safeguard procedural integrity, Section 17(2) further requires video recording of all warrantless searches and recoveries—an important measure to promote transparency and deter abuse of authority, as upheld in *Zahid Sarfraz Gill v. The State* [2024 SCMR 934] and *Muhammad Abid Hussain v. The State* [2025 SCMR 721]. The Court further explains that although the quantity of contraband may bring the case within the prohibitory clause under Section 497 Cr.P.C., this is not an automatic bar to bail. The key issue is whether a *prima facie* credible recovery has been made out by the prosecution and whether the defence has raised reasonable doubt justifying further inquiry under Section 497(2) Cr.P.C. without turning the bail hearing into a substitute for trial. Further exposition of this legal principle 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].

8. In the instant case, the alleged seizure of 1070 grams of charas falls within the scope of Section 9 (i) 3 (c) of the Control of Narcotic Substances Act, which prescribes a punishment of not less than nine years and up to fourteen years' imprisonment, along with a fine ranging from one hundred thousand to five hundred thousand rupees. Notably, the minimum sentence of nine years does not meet the threshold required to attract the prohibitory clause under Section

497 (1) Cr.P.C. which is triggered only where the minimum punishment is ten years or more. Accordingly, the offence does not, on the face of it, bar the grant of bail. Moreover, since the arrest purportedly occurred in broad daylight, it appears unlikely that no private individuals were available to serve as mashirs. While Section 103 Cr.P.C. is inapplicable to offences under the CNS Act by virtue of Section 25, the procedural safeguard provided under Section 17(2) of the amended Act assumes particular importance. This provision mandates that warrantless recoveries, searches, and arrests be documented through video recording or photographs to ensure the legitimacy and transparency of the law enforcement process. In the present matter, the record indicates that these safeguards were not followed, significantly undermining the credibility of the prosecution's narrative. Such lapses and procedural irregularities give rise to serious doubt regarding the genuineness of the alleged recovery and arrest, thus clearly placing the case within the ambit of further inquiry as contemplated under Section 497 (2) Cr.P.C. It is also pertinent to refer to the established principle laid down by the Honourable Supreme Court in *Muhammad Arshad v. The State* [2022 SCMR 1555], which affirms that the benefit of doubt may be granted even at the bail stage, if the circumstances so warrant.

9. In view of the foregoing analysis, it is apparent that the prosecution has failed to produce the mandatory video or photographic evidence as required under Section 17 (2) of the Sindh Control of Narcotic Substances Act, 2024. This omission casts serious doubt on the authenticity of the alleged recovery and arrest.

Furthermore, the non-association of private mashirs—despite the incident allegedly occurring in a public and accessible area—and the absence of any independent corroborative material, further diminish the credibility of the prosecution’s case. More so, sections 16, 17 and 18 under Chapter-II of the Act are interconnected with each other. It is equally relevant to observe that the minimum sentence prescribed for the charged offence does not fall within the prohibitory clause contemplated under Section 497 Cr.P.C. *prima facie*, it appears that the material on record does not connect petitioner to the commission of offence. In light of these procedural shortcomings and given that the petitioner has successfully raised grounds for further inquiry under Section 497(2) Cr.P.C., we are persuaded that he is entitled to the grant of bail in the interest of justice, due process, and to prevent potential abuse of prosecutorial discretion. Accordingly, this petition is allowed. The petitioner, Nadeem @ Bhoora son of Yousif Qureshi, shall be released on bail upon furnishing a solvent surety in the sum of Rs. 200,000/- (Rupees Two Hundred Thousand only), along with a personal bond in the like amount, to the satisfaction of the learned trial Court.

10. It is clarified that the observations made in this order are provisional in nature and shall not prejudice the outcome of the trial.

JUDGE

JUDGE

****Abdullahchanna/PS****