

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Const. Petition No.D- 875 of 2025

Date of hearing	Order with signature of Judge
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Before:
Mr. Justice Muhammad Saleem Jessar
Mr. Justice Riazat Ali Sahar

Petitioner : **Akhtar Ali Dharejo** through Mr. Rukhsar Ahmed Junejo, Advocate.

The Respondents: **The State and Province of Sindh** through M/s Syed Sardar Ali Shah, Additional P.G and Agha Athar Pathan, Assistant A.G a/w SIP/SIO Muhammad Punjal.

Date of Hearing : **08-07-2025**
Date of Decision : **08-07-2025**

O R D E R

RIAZAT ALI SAHAR, J.- By way of this petition, petitioner Akhtar Ali son of Ali Hassan by caste Dharejo, seeks his release on post arrest bail in crime No.106 of 2025 under section 9 (3) (c) CNS (Amendment) Act, 2022, registered at Police Station Rohri, District Sukkur for allegedly possessing 2000 grams of Charas.

2. Since facts of the prosecution case are already mentioned in the FIR as well as in the memo of petition; therefore, there is no need to reproduce the same. Reliance is placed on the case of **Muhammad Shakeel v. The State & others** (PLD 2014 SC 458).

3. Record reflects that interim challan was submitted by the police on 26.05.2025, and final report under Section 173 Cr.P.C. was also submitted on 25.06.2025, which is presently pending for preliminary proceedings in light of the dicta laid down in the case of **Muhammad Ramzan vs. Rahib** (PLD 2010 SC 585). Since the statute does not provide a specific provision for filing a bail application, and there being no alternate remedy, the petitioner has maintained this petition.

4. Learned counsel for the petitioner argued that the alleged recovery of contraband substance, viz. Charas weighing two kilograms, is a meager quantity. He next submitted, although the punishment for offence under the CNS (Amendment) Act, 2022) is “*may extend to fourteen years, it shall not be less than nine years*”, however the lesser quantum of sentence has been provided which does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C. He, therefore, contended that the case against the petitioner requires further inquiry and prayed for grant of bail.

5. Learned Law Officers, in view of above facts and circumstances, have recorded their no objection.

6. We have heard learned counsel for the petitioner as well as law officers and have gone through the material made available before us on record.

7. Admittedly, the alleged recovery of 2000 grams of Charas was effected from the possession of petitioner; however, the punishment provided for the offence in question is the imprisonment which may extend to 14 years, but shall not be less than 7 years. As per settled legal principles, while deciding bail pleas, the lesser punishment is to be considered. The offence, carrying a minimum punishment of 7 years, does not attract the prohibitory clause of Section 497 Cr.P.C. and, therefore, grant of bail is a rule while its refusal is an exception, as enunciated by the Hon’ble Supreme Court of Pakistan in the case of **Tarique Bashir v. The State** (PLD 1995 SC 34).

8. In the present case, although the alleged recovery is of 2000 grams of Charas, the surrounding circumstances create substantial doubt. The FIR and recovery was allegedly effected by a ASI, who, under the relevant statutory framework, lacks the requisite authority to conduct such operations. The non-association of private mashirs in such circumstances undermines the credibility of the prosecution case. Additionally, no video recording or photographic evidence of the recovery proceedings has been placed on record, despite the availability of technology and the statutory expectation of transparency

under such circumstances. Reliance is placed on the cases of **Muhammad Abid Hussain v. The State** (2025 SCMR 721) and **Zahid Sarfaraz Gill v. The State** (2024 SCMR 934). It is a well-entrenched principle that in cases hinging solely on police testimony, the benefit of doubt must be afforded to the accused, even at the bail stage. Reliance is placed on the case of **Muhammad Arshad v. The State** (2022 SCMR 1555).

9. In the circumstances and in view of above legal as well as factual position of record the petitioner has successfully made out a good prima facie case for his release on bail. The case of petitioner is purely covered by sub-section 2 to Section 497 Cr.P.C. Consequently instant Const. Petition was **allowed** by our short order dated 08.07.2025, whereby the petitioner **Akhtar Ali Dharejo** was ordered to be released on bail subject to his furnishing solvent surety in the sum of **Rs.50,000/- (Rupees Fifty Thousand)** and P.R bond in the like amount to the satisfaction of 1st Civil Judge & Judicial Magistrate, Rohri/trial Court or as the case may be. These are the reasons in support of our above short order.

10. Needless to mention here that the observations recorded hereinabove are tentative in nature and shall not, in any manner, prejudice or influence the trial Court during the adjudication of the case

JUDGE

JUDGE

Ahmad/P.S