

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Constitution Petition No.D-1017 of 2025

Before:
Mr. Justice Yousuf Ali Sayeed;
Mr. Justice Abdul Hamid Bhurgri.

Petitioner : Muhammad Moosa son of Muhammad Baqa Sahito, through Mr. Naveed Hussain Umrani, Advocate.

Respondents : The State and another, through Mr. Irfan Ali Talpur, Deputy Prosecutor General Sindh.

Date of Hearing: 15.07.2025.
Date of Order. 15.07.2025.

ORDER

Abdul Hamid Bhurgri, J.- The petitioner seeks post-arrest bail through the instant petition filed under Article 199 of the Constitution, in view of the embargo contained in Section 35(1) of the Sindh Control of Narcotic Substances Act, 2024. Reference is made to the judgment dated 22.04.2025, passed by a three-member bench of this Court in Constitutional Petition No. D-937 of 2025. The petitioner is accused in FIR No. 20 of 2025, lodged at Police Station Dasori, District Tando Allahyar on 23.05.2025, wherein he is alleged to have been apprehended on the spot with a recovery of 510 grams of charas from his possession.

2. On 23-05-2025, the complainant (SIP at PS Dasori, Tando Allahyar) and his team were patrolling per Roznamcha Entry No. 09 when they observed two suspicious individuals near Mian Makhdoom Graveyard. Upon noticing the police, both tried to flee; one was arrested around 1200 hours, later identified as the petitioner, Muhammad Moosa. The second escaped. A black plastic shopper was recovered from the petitioner’s left pocket, which, upon inspection, revealed a silver-and-brown packet labeled “Bravo” containing a large piece of Charas. The Charas, wrapped in golden foil, weighed 510 grams. The petitioner admitted to selling it jointly with the absconding co-accused, Muhammad Afzal. Rs. 2000 in currency notes were also recovered. A recovery memo was prepared in the presence of police mashirs. The petitioner was arrested, taken to the station, and an FIR was lodged.

3. Learned counsel for the petitioner submits that the FIR is false and has been registered with mala fide intent. It is contended that the petitioner is engaged in business of running a restaurant, where police officials were in the habit of consuming meals and tea without making payment. Upon the petitioner's demand for settlement of dues, a false and fabricated case has allegedly been foisted upon him as an act of reprisal. He claimed no independent witnesses were cited, despite the area being densely populated. The petitioner, belonging to a respectable family and lacking prior criminal record, sought bail under Section 497 CrPC, asserting the offence does not fall under the prohibitory clause.

4. On the other hand, the learned Deputy Prosecutor General has opposed the grant of bail to the petitioner by submitting that the name of the petitioner has transpired in the FIR with a specific role; that the counsel for the petitioner has failed to demonstrate the existence of any enmity between the petitioner and the police officials, thereby negating any motive for the police to falsely implicate the petitioner in the present case. He prayed for dismissal of the petition for post arrest bail.

5. We have heard the learned counsel for the petitioner as well as the learned Deputy Prosecutor General Sindh and have perused the material available on record.

6. Though the prosecution claims that the petitioner was selling Charas, but no buyer was apprehended. This is despite the fact that the alleged incident occurred during daytime in a densely populated area, and no effort was made to associate any independent witness at the time of recovery. It is a well-established principle that when the prosecution's case rests entirely on police testimony and is not corroborated by natural witnesses, the benefit of doubt ought to be extended even at the bail stage. Reliance is placed upon ***Muhammad Arshad v. The State (2022 SCMR 1555)***. Furthermore, there is no previous criminal record of the petitioner, and he cannot be declared a habitual offender.

7. Prima facie, at this stage, the case of the petitioner appears to be one of further inquiry. While official witnesses are legally treated at par with other witnesses, the credibility and veracity of their testimony can only be assessed during the trial.

8. Accordingly, in the light of the above considerations, the petition was allowed through a short order dated 15.07.2025, whereby the petitioner/accused was granted post-arrest bail, subject to furnishing a surety in the amount of Rs.50,000/- along with a personal bond in the same amount, to the satisfaction of the trial court.

9. Needless to mention, the observations made hereinabove are tentative in nature and shall not influence the learned trial court while deciding the case on its merits. The Petitioner is directed to ensure his presence on each and every date of hearing without fail before the Trial Court. In case of failure, trial court shall be at liberty to cancel his bail.

Judge

Judge