

HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 942 of 2025

(Fayyaz Shaikh v. P.O Sindh and another)

Present:

Mr. Muhammad Saleem Jessar, J.

Mr. Riazat Ali Sahar, J.

Date of hearing : **23.07.2025**

Date of decision : **23.07.2025**

Mr. Muhammad Saleh Jatoi, Advocate for the petitioner.

M/s Athar Hussain Pathan, Assistant Advocate General and Khalil Ahmed Maitlo, Deputy P.G.

ORDER

Riazat Ali Sahar, J. – Through this petition, petitioner Fayyaz Shaikh seeks post arrest bail in Crime No.52 of 2025, registered at Police Station, Baiji Sharif under Section 9(B) of CNS Act, (“**the Act**”), for allegedly possessing 500 grams of Charas.

2. The factual background has already been comprehensively set out in the FIR accompanying the petition for bail; accordingly, any reiteration is unnecessary and unwarranted, in line with guiding principles laid down by the Honourable Supreme Court in **Muhammad Shakeel v. the The State [PLD 2014 SC 458]**, wherein it was held that duplication of facts serves no practical purpose and should be avoided in the interest of judicial economy and clarity.

3. Learned Counsel for the petitioner argued that there are no reasonable grounds to believe the petitioner committed the offence. He contended that no recovery was made from the exclusive possession of the petitioner, that the FIR is stereotypical and illogical, and that the case is fraught with legal infirmities, notably the lack of independent witnesses despite the recovery allegedly taking place in a populated area, and the noncompliance with mandatory video recording under Section 17(2). He further pointed to the petitioner’s clean antecedents and local residence

and urged that bail, a rule rather than an exception, must not be withheld merely as a form of punishment.

4. Learned Law Officers, in view of above, did not oppose for the grant of bail.

5. Having heard both sides and perused the record, we first address the statutory framework. Section 35 of the Act provides that bail shall not be granted to an accused under the Act, notwithstanding Sections 496 and 497 Cr.P.C. However, subsection (2) stipulates that the trial must be concluded within six months, reflecting the legislature's intention to balance deterrence and public safety against the accused's right to expeditious trial. Importantly, the Larger Bench of this Court in **Constitutional Petition No. D-937 of 2025** has clarified that, in the absence of a statutory bail mechanism under the Act, petitions seeking bail fall within the constitutional jurisdiction of this Court under Article 199 of the Constitution. This principle draws support from the apex Court's ruling in **Khan Asfandiyar Wali v. Federation of Pakistan [PLD 2001 SC 607]**, where Section 9(b) of the NAB Ordinance, 1999, which excluded High Court jurisdiction to grant bail, was declared unconstitutional. The Supreme Court reaffirmed that superior courts retain their constitutional jurisdiction to entertain bail petitions, particularly where issues of fundamental rights arise.

6. Turning to the facts, the petitioner faces a charge of possession of 500 grams of Charas. Under the Act, the prescribed punishment is the imprisonment which may extend to fourteen years but shall not be less than nine years. This punishment, notably, falls below the ten-year threshold that triggers the prohibitory clause under Section 497(1) Cr.P.C. Consequently, the case qualifies for consideration under Section 497(2) Cr.P.C., which allows bail in cases requiring further inquiry.

7. Central to our consideration is Section 17 of the Act, which authorizes search, seizure and arrest without warrant only by officers not below the rank of Inspector Narcotics Control or equivalent authorized by the Director General. Subsection (2) further mandates video recording of

all raids, seizures, inspections and arrests. This requirement is not a mere procedural nicety but an essential safeguard designed to ensure transparency, accountability and to prevent arbitrary or mala fide actions. This principle finds support in **Zahid Sarfraz Gill v. The State [2024 SCMR 934]**, where the Honourable Supreme Court underscored the importance of visual evidence in narcotics recoveries, noting that mobile phone cameras and other modern devices should be routinely used to record searches and arrests. The Court highlighted that such evidence helps establish lawful recovery, strengthens prosecution and shields law enforcement from false allegations. Similarly, in **Muhammad Abid Hussain v. The State [2025 SCMR 721]**, the apex Court reaffirmed the application of **Article 164 of the Qanun-e-Shahadat Order, 1984**, which permits evidence derived from modern devices, stressing that the absence of such measures weakens the prosecution case.

8. In the present case, the arresting official was an ASI, not an officer of authorized rank under Section 17(1). No video recording or photographic evidence was produced in compliance with Section 17(2). Although the learned DPG argued that the absence of private *mashirs* is common due to public hesitation, we note that the alleged recovery occurred in broad daylight in a populated locality where, prima facie, civilian witnesses could have been secured. While it is settled law that Section 103 Cr.P.C. is excluded from application to narcotics cases, procedural safeguards specific to the Sindh Act—such as the rank of arresting officer and mandatory video recording—cannot be ignored or diluted. Their noncompliance creates serious doubt about the legality and credibility of the recovery proceedings.

9. On the question of the burden of proof, the prosecution must demonstrate at least a credible recovery, shifting the onus to the accused to rebut the presumption, even at the bail stage. However, at this stage, the Court does not conduct a mini-trial but makes a tentative assessment of the available material. Given the low quantity recovered, the non-applicability of the prohibitory clause, the unauthorized officer's involvement, absence of video recording and lack of independent

corroboration, the case qualifies as one of further inquiry. The benefit of doubt, as reaffirmed in **Zahid Sarfraz Gill [supra]**, can extend at the bail stage to prevent wrongful incarceration.

10. In view of the above, we find that the prosecution has failed to prima facie establish the petitioner’s connection to the alleged offence in a manner that would justify denial of bail. The procedural irregularities materially weaken the prosecution’s case and tilt the balance towards the petitioner’s constitutional right to liberty and fair trial under **Article 10-A of the Constitution**. Accordingly, we **allow** this petition. The petitioner, **Fayyaz Shaikh** shall be released on bail upon furnishing solvent surety in the sum of Rs.50,000 (Rupees Fifty Thousand) and a personal bond in the like amount to the satisfaction of the learned trial Court / Sessions Judge, Sukkur.

11. We clarify that all observations herein are tentative and shall not influence the outcome of the trial proceedings.

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