

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Constitution Petition No.D-1139 of 2025

Before:

***Mr. Justice Yousuf Ali Sayeed;
Mr. Justice Abdul Hamid Bhurgri.***

Petitioner : Mahboob Ali son of Ghulam Qadir Khokhar,
through Mr. Khalid Saeed Soomro,
Advocate.

Respondents : The State and another,
through Mr. Irfan Ali Talpur,
Deputy Prosecutor General Sindh.
Mr. Muhammad Ismail Bhutto, Additional
Advocate General Sindh,

Date of Hearing: 21.07.2025.

Date of Order. 21.07.2025.

ORDER

Abdul Hamid Bhurgri, J,- Mehboob Ali has sought post-arrest bail by filing this Constitution Petition Under Article 199 of the Constitution of Islamic Republic of Pakistan, in light of the embargo envisaged under Section 35(1) of the Sindh Control of Narcotic Substances Act, 2024. Reference is placed upon the Judgment dated 22.04.2025, rendered by a three-member bench of this Court in Constitutional Petition No. D-937 of 2025. The petitioner stands nominated in FIR No. 173 of 2025, registered at Police Station A-Section, District Dadu, on 09.06.2025, wherein it is alleged that he was apprehended at the place of recovery with 530 grams of charas recovered from his possession.

2. FIR alleges that the complainant along with his subordinate staff left CIA center for arrest of absconders and narcotics seller on 09.06.2025 at 1930 hours under entry No.10. At 2000 hours when they reached near Dodani Mori at Dadu Moro road saw a person, who seeing them tried to evade but he was apprehended. On inquiry he disclosed his name to be Mahboob Ali. His body search led to recovery of a black shopper, which was found containing five pieces of charas and two currency notes each of Rs.100/-. Recovered charas was weighed to be 530 grams and out of it, 20 grams of charas was sealed separately for chemical analysis. After preparation of memo and sealing of the case property, the complainant

brought accused and property at PS A-Section Dadu, where he got registered instant FIR.

3. Learned counsel for the petitioner submits that the FIR is false and has been registered with malafide intend and the contraband material has been foisted upon the petitioner. He further argued that identification of the petitioner in the headlight of vehicle is weak type of evidence. 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, hence sought bail.

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 transpires in the FIR and contraband material was recovered from his exclusive possession; 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. The alleged offence of recovery carries punishment of nine years but shall not be less than five years and it is a settled principle that, at bail stage, lesser punishment is to be considered. Consequently, the purported recovery from the petitioner does not fall within the ambit of an offence of a “prohibited degree”, thereby rendering bail the norm and incarceration the exception.

7. Furthermore, the alleged recovery is stated to have taken place in a densely populated locality; nonetheless, the police failed to associate any neutral or independent witnesses at the relevant time. It is a cardinal principle of criminal jurisprudence that where the prosecution’s case is premised exclusively upon official testimony, devoid of corroboration from impartial and independent witnesses, the benefit of doubt must necessarily accrue to the accused. In this regard, reliance is placed upon the precedent laid down in ***Muhammad Arshad v. The State (2022 SCMR***

1555). Additionally, the petitioner has no prior criminal antecedents and, therefore, cannot be categorized as a habitual offender.

8. Prima facie, the accusations against the petitioner warrant further inquiry. While official witnesses may be accorded the same evidentiary value as private witnesses, the veracity of their statements must nonetheless be subjected to scrutiny during trial.

9. It is in view of the foregoing considerations that the petition was allowed vide a short order dated 21.07.2025 and the petitioner/accused was admitted to post-arrest bail subject to his furnishing a solvent surety in the sum of Rs.50,000/- and an equivalent P.R. bond to the satisfaction of the learned trial Court.

10. It is clarified that the observations recorded hereinabove are merely tentative and shall not prejudice the learned trial Court in adjudicating the case on its merits. The petitioner shall ensure his punctual attendance on each and every date of hearing, failing which the trial Court shall be at liberty to recall the concession of bail.

Judge

Judge