

**IN HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA**

C.P No. D-534 of 2025

[Nawab Lakhair v. The State]

Before:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Riazat Ali Sahar

Petitioner: **Nawab Lakhair** through Mr.
Ali Anwar Sahar, Advocate.

The State & P.O.Sindh: Through M/s Waheed Ahmed
Shaikh, Assistant Prosecutor
General, Sindh and Munwar
Ali Abbasi, Assistant A.G
Sindh a/w SIP Abdul Majeed,
Investigating Officer.

Date of Hearing: 04.07.2025

Date of Order 04.07.2025

ORDER

Riazat Ali Sahar, J. Through this petition, petitioner Nawab son of Ali Murad Lakhair seeks post-arrest bail in Crime No.10/2025 registered at Police Station Shah Panjo Sultan for the offence punishable under Section 9 (ii) (3) (b) of the Sindh Control of Narcotics Act, 2024 (hereinafter referred to as “the Act”).

2. There exists no express provision regarding the grant of bail under the Act, as is evident from the language of Section 35, which provides 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, laid down that in the absence of

any provision regarding the grant of bail under the Act, all matters pertaining to bail shall fall exclusively within the domain of the High Court under its constitutional jurisdiction.

3. Furthermore, the Honourable Supreme Court in the case of *Khan Asfandiyar Wali v. Federation of Pakistan* [PLD 2001 SC 607] dealt with similar constitutional implications where the NAB Ordinance, 1999 ousted the jurisdiction of the High Courts to grant bail. The apex Court declared Section 9(b) of the NAB Ordinance *ultra vires* the Constitution, reaffirming that the High Courts retain jurisdiction under Article 199 to entertain bail petitions. The Court observed that statutory exclusion of judicial review in matters affecting fundamental rights cannot override constitutional guarantees.

4. According to the prosecution, on 14.04.2025, ASI Pathan Khan Lakhair of PS Shah Panjo Sultan along with subordinate staff proceeded on patrol in government vehicle SPD-035, as per roznamcha entry No.07. While patrolling from Shah Panjo Sultan to Daoo Dero road, near Dostan Stop at about 11:00 a.m., they noticed a person holding a black shopper in a suspicious manner. He was apprehended and identified himself as Nawab son of Ali Murad Lakhair. Upon search of the shopper, pieces of *charas* weighing 530 grams and three currency notes of Rs.50 each were recovered. Due to non-availability of public mashirs, PCs Muhammad Morial Channa and Kashif-ur-Rehman Lakhair acted as official mashirs. The contraband and cash were seized, mashirnama was prepared, and the FIR was registered under Section 9 (ii) (3) (b) of the Act.

5. Mr. Ali Anwar Sahar, learned counsel for petitioner, contended that the FIR was registered with mala fide intent due to prior enmity with the police. He contended that the prosecution story is stereotypical, poorly constructed and not credible. He contended that the recovery was not from the exclusive possession of the petitioner and was allegedly staged at the police station. He

further contended that the petitioner has clean antecedents, is a local resident, and has shown willingness to cooperate in the investigation. He has further contended that bail should not be refused merely as a form of punishment and that wrongful incarceration would cause irreparable harm in case of acquittal. He prayed for bail on grounds of mala fide, further inquiry, and lack of credible evidence.

6. On the other hand, Mr. Waheed Ahmed Shaikh, learned Assistant Prosecutor General, Sindh, opposed the bail. He submitted that the petitioner was apprehended red-handed with *charas* weighing 530 grams, attracting Section 9 (ii) (3) (b) of the Act. He submitted that all legal formalities were duly observed, the seizure was properly documented and the samples were sent for chemical analysis. He explained the absence of private mashirs as due to public reluctance in narcotics cases and maintained that the police testimony cannot be discarded solely on that account. He emphasized that due to the gravity of the offence and the statutory presumption of guilt, the petitioner was not entitled to bail.

7. Heard. Record Perused.

8. Section 35 of the Act comprises two limbs. The first restricts grant of bail as a deterrent against the rising trend of narcotics offences. The second mandates conclusion of trial within six months, which appears aimed at balancing deterrence with protection against unjustified pre-trial detention. However, the absence of Special Courts under the Act undermines the realization of this legislative objective.¹

9. Section 17 of the Act permits search, seizure, and arrest without warrant, but only by an officer not below the rank of

¹ The urgent need of such special court was also emphasized by Muhammad Karim Khan Agha, J in Syed Sahir Hassan v. P.O Sindh & others [CP No. D-937 of 2025] as :

"Accordingly a copy of this order shall be sent to the Chief Secretary and Secretary Law, government of Sindh, who shall ensure that special Courts under the aforesaid Act are established immediately and the Judges for such Courts shall be appointed in accordance with law expeditiously so that these cases can be tried and the petitioner and other may not left languishing in jail without any resource"

Inspector Narcotics Control duly authorized by the Director General Narcotics Control Sindh. More importantly, Section 17 (2) mandates video recording of all such operations. These statutory safeguards are meant to ensure transparency and protect against arbitrary or mala fide action. The importance of such visual documentation has been emphasized by the Honourable Supreme Court in ***Zahid Sarfraz Gill*** and ***Muhammad Abid Hussain***. For convenience, Sections 16, 17, and 18 of the Act are reproduced as under:-

CHAPTER – III

SEARCH AND INVESTIGATION

17. Power of entry, search, seizure and arrest without warrant. – (1) Where an officer, not below the rank of Inspector Narcotics Control or equivalent authorized in this behalf by Director General Narcotics Control Sindh, who from his personal knowledge or from information given to him by any person is of opinion that any narcotic drug, psychotropic substance, precursor chemicals or controlled substance and methamphetamine in respect of which an offence punishable under this Act has been committed is kept or concealed in any building, place, premises or conveyance, and a warrant for arrest or search cannot be obtained against such person without affording him an opportunity for the concealment of evidence of facility for his escape, such officer may-

- (a) Enter into any such building, place, premises of conveyance;
- (b) Break open any door and remove any other obstacle to such entry in case of resistance;
- (c) Seize such narcotics drugs, psychotropic substances, precursor chemical, controlled substances and other materials used in the manufacture thereof and any other article which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act; and
- (d) Detain, search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed an offence punishable under this Act.

(2) The video recording of all raids, seizures, inspections and arrests shall be made by the officer in-charge of such operations.

(3) Before or immediately after taking any action under sub-section (1), the officer referred to in that sub-section shall record the grounds and basis of his information and proposed

action and forthwith send a copy thereof to his immediate superior officer.

(4) All the offences under this Act shall be cognizable and non-bail-able.

18. Power to seizure and arrest in public place. -

An officer authorized under section 17 may -

- (a) Seize, in any place or in transit, any narcotic drug, psychotropic substance, precursor chemical or controlled substance in respect of which he has reason to believe that an offence punishable under this Act has been committed, and, along-with such drug, substance or any other article liable to confiscation under this Act, and any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act; and
- (b) Detain and search any person whom he has reasons to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug, psychotropic substance, precursor chemical or controlled substance in his possession and such possession appears to him to be unlawful, arrest him.

10. The principle that emerges is that the quantity of the recovered substance alone cannot dictate the denial of bail. The overall facts, procedural compliance, and the legal basis of the recovery must be evaluated in light of the statutory protections.

11. If the prosecution sets up a prima facie recovery, the burden shifts to the accused to raise doubt through plausible material to bring the case within the ambit of further inquiry under Section 497 (2) Cr.P.C. The punishment under Section 9 (ii) (3) (b) may extend up to nine years, but the minimum sentence is five years, which falls below the ten-year threshold under the prohibitory clause of Section 497 (1) Cr.P.C. Therefore, the petitioner is eligible for consideration of bail.

12. Notably, the arrest allegedly took place during daylight hours, yet no private mashirs were associated. The recovery and FIR were both undertaken by an ASI, although Section 17 (1) requires the officer to be not below the rank of Inspector. There is also no evidence of compliance with Section 17 (2), which mandates

video recording of the operation. These lapses materially impair the prosecution's case and place the matter within the scope of **further inquiry**.

13. Prima facie, the material on record does not conclusively connect the petitioner with the commission of the offence. Accordingly, by our short order dated 04.07.2025, the petition was **allowed**. Petitioner Nawab son of Ali Murad Lakhair was admitted to post-arrest bail, subject to furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand only) and a personal bond in the like amount to the satisfaction of the trial Court. These are the reasons for the short order dated 04.07.2025. The petition stands allowed.

14. Needless to state, any observations made hereinabove are tentative in nature and shall not influence the trial.

JUDGE

JUDGE

Manzoor