

HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 698 of 2025

(*Shahzado Bhayo v. The State & others*)

Present:

Mr. Arbab Ali Hakro, J.

Mr. Abdul Hamid Bhurgri, J.

Date of hearing : **03.06.2025**

Date of decision : **03.06.2025**

Mr. Saeed Ahmed Chachar, Advocate for petitioner.

Mr. Aftab Ahmed Shar, Additional Prosecutor General.

ORDER

Arbab Ali Hakro, J. – Through this Constitution Petition, petitioner Shahzado son of Jumo Khan Bhayo seeks his release on post-arrest bail in Crime No.72 of 2025, registered at Police Station Daharki, District Ghotki, for an offence under Section 9(1), Serial No.3(a) of the Sindh Control of Narcotic Substances Act, 2024 (“**Act of 2024**”).

2. According to the contents of the FIR, the accusation leveled against the petitioner is that on 06.05.2025 at 2030 hours, he was apprehended by a police party led by ASI Muhammad Ayoob Laghari of Police Station Daharki while present on the National Highway in proximity to Engro Gate-III, Daharki. It is alleged that, during the course of his arrest, the petitioner was found in possession of 300 grams of charas, purportedly recovered from his custody. This recovery is asserted to constitute the foundational premise of the prosecution’s case against the petitioner.

3. Learned counsel for the petitioner contended that the petitioner, a labour union leader, has been falsely implicated at the behest of the administration of Engro Fertilizer Company due to ongoing labour disputes. He further argued that the purported recovery of 300 grams of charas is shrouded in doubt and lacks independent corroboration. It was emphasized that no independent witness was present at the time of the alleged recovery, in violation of Section 103 Cr.P.C, and that the recovery was neither photographed nor video recorded, despite repeated directives of the Supreme Court of Pakistan underscoring the imperative of employing modern technology in evidentiary matters, as envisaged under Article 164 of the Qanun-e-Shahadat Order, 1984. Additionally, it was asserted that the complainant / raiding officer, an ASI, lacked the requisite authority under the Act of 2024, to conduct such search and arrest. Given that the recovery was allegedly

effected in a bustling public area, yet no effort was made to secure the presence of any impartial witness, the prosecution's narrative appears fraught with serious doubts. In view thereof, the case, according to the learned counsel, warrants further inquiry.

4. Conversely, learned Additional Prosecutor General opposes the bail plea and contends that, given the purported recovery of narcotics from the petitioner's possession and the prompt registration of the FIR, there exists sufficient *prima facie* material to establish a nexus between the petitioner and the alleged offence.

5. Having heard the learned counsel for the petitioner as well as the learned Additional Prosecutor General, and upon meticulous perusal of the record, the matter stands for determination in accordance with the settled principles of law.

6. It remains undisputed that the Act of 2024, has come into force within the territorial jurisdiction of Sindh, thereby repealing the applicability of the Federal Control of Narcotic Substances Act, 1997. Section 35(1) of the Act of 2024, unequivocally bars the application of Sections 496 and 497 Cr.P.C, thereby ousting the jurisdiction of subordinate courts from entertaining bail applications in cases pertaining to narcotic offences.

7. However, in view of the fundamental rights enshrined under Articles 9, 10-A, and 14 of the Constitution, the High Court retains jurisdiction under Article 199(1)(c) to entertain post-arrest bail petitions, notwithstanding the ouster clause encapsulated in Section 35(1) of the Act of 2024. Reliance is placed on the seminal judgment of the Supreme Court in a case of **Khan Asfandiyar Wali**¹, wherein it was authoritatively held that statutory ouster clauses cannot supersede constitutional jurisdiction when fundamental rights are in question.

8. Recently, in a case of **Muhammad Abid Hussain**², the Supreme Court of Pakistan has once again underscored the imperative of procedural fairness and the utilization of modern investigative techniques. It has been categorically held that the absence of video evidence and the non-association of independent witnesses in the recovery process casts serious doubt upon the prosecution's case. Furthermore, the Apex Court has reaffirmed that protection against arbitrary and unjust incarceration constitutes a fundamental constitutional safeguard, emphasizing that interim relief in the form of bail cannot be withheld solely on the ground that the offence entails severe punishment.

9. In the present case, while the quantity of the alleged recovery stands at 300 grams, the circumstances surrounding the seizure are fraught with substantive

¹ Khan Asfandiyar Wali v. Federation of Pakistan (PLD 2001 SC 607)

² Muhammad Abid Hussain v. The State (2025 SCMR 721)

doubts. Notably, the recovery was effectuated by an ASI who, under the relevant legal framework, lacks the requisite authority to conduct such a search and seizure. Furthermore, there exists no video or photographic record substantiating the recovery, nor was any independent witness associated with the proceedings, thereby contravening established procedural safeguards. In addition, there are specific and direct allegations of mala fide, ostensibly stemming from underlying labour union disputes. In view of these cumulative factors, the case is manifestly one warranting further inquiry.

10. It is noted that out of the total alleged recovery of 300 grams of charas, only 100 grams were separated and sealed for chemical analysis. While this may suffice for the purpose of laboratory testing, the absence of clear details regarding the handling, sealing and custody of the remaining quantity raises concerns about evidentiary integrity at this preliminary stage. Though this issue shall be fully examined at trial, such lapse, when viewed in conjunction with other procedural irregularities, such as the lack of independent witnesses and the questionable authority of the arresting officer, adds weight to the petitioner's plea that the case requires further inquiry, thereby justifying grant of bail at this stage.

11. It is a well-settled principle of law that, in cases where the prosecution's evidence is solely predicated upon testimony from police witnesses without any independent corroboration, particularly in narcotics matters carrying grave legal consequences, the benefit of doubt must be extended to the accused, even at the stage of bail consideration.

12. Accordingly, the instant petition stands **allowed**. Petitioner Shahzad son of Jumo Khan Bhayo, is admitted to post-arrest bail in Crime No.72 of 2025, registered at Police Station Daharki, District Ghotki, under Section 9(1), Serial No.3(a) of the Act of 2024, subject to his furnishing a solvent surety in the sum of Rs.100,000/- (Rupees one lac) and a P.R bond in the like amount, to the satisfaction of the trial Court.

13. Needless to state, the observations recorded herein are tentative in nature and shall not, in any manner, prejudice or influence the trial Court during the adjudication of the case.

Above are the reasons of our short order dated 03.06.2025.

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