

# IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No.D-739 of 2025

**Before:**

*Mr. Justice Arbab Ali Hakro;  
Mr. Justice Abdul Hamid Bhurgri.*

Petitioner : Kamran @ Dadlo son of Sikiladho Bozdar,  
through Mr. Muhammad Ali Dayo,  
Advocate.

Respondents : Province of Sindh and another,  
through Mr. Aftab Ahmed Shar,  
Additional Prosecutor General Sindh.

***Date of Hearing:*** 05.06.2025.  
***Date of Order.*** 05.06.2025.

## **ORDER**

**Abdul Hamid Bhurgri, J.**- Through this petition, the petitioner has prayed for grant of post arrest bail in the crime No.92/2025 for offence punishable Under Section 9(1)-3(a) of the Sindh Control of Narcotic Substances, Act, 2024 (hereinafter it will be referred as Act, 2024) of PS Mirpur Mathelo.

**2.** While it is cardinal principle that the bail matters are ordinarily to be adjudicated by the Courts of ordinary criminal jurisdiction under the statutory frame work, the maintainability of Constitution Petition cannot be ousted where exceptional circumstances exists particularly where the statutory law itself imposes an absolute or near absolute bar on the grant of bail. In the present case the petitioner has approached this court under article 199 of the Constitution, asserting that Section 35(1) of the Act, 2024 categorically prohibits the grant of bail in offence under the act, thereby creating a legislative embargo that renders a remedy under ordinary criminal procedure illusory. The section 35(1) of the Act, 2024 is reproduced as under:-

*“Notwithstanding anything contained in section 496 and 497 of the Code, the bail shall not be granted to an accused person charged with an offence under this Act.*

**3.** It is well established that the right to liberty is a fundamental right, guaranteed Under Article 9 of the Constitution, where such liberty is curtailed by operation of statutory bar, regardless of the individual merits of

the case, the High Court's Constitutional jurisdiction remains available to ensure that the mandate of the Constitution is not defeated by the procedural rigidity. The Constitutional Jurisdiction thus serves as a check against potential miscarriage of justice where no efficacious remedy is available. In such exceptional circumstances, where statutory forums are rendered ineffective by operation of law, the Constitution Petition is held to be maintainable. Reliance is placed on the judgment of the Honourable Supreme Court in case of ***Khan Asfandiyar Wali another v. Federation of Pakistan (PLD 2001 Supreme Court 607)***.

**4.** The prosecution's case, as delineated in the FIR lodged by HC Aijaz Ali Gadani of PS Mirpur Mathelo on behalf of the State, alleges that on 11.05.2025 at approximately 1530 hours, the complainant, accompanied by PC Illahi Bux, PC Shoukat Ali, and DPC Altaf Hussain, commenced patrolling duties within the jurisdiction as recorded in roznamcha entry No.12. During patrol at Bozdar Colony, the police party purportedly observed the petitioner, Kamran alias Dadlo, and one Sadoro alias Sadroo engaged in the sale of charas outside a residence, each holding a shopper bag. Upon detecting the presence of law enforcement, the accused individuals allegedly attempted to flee. One of them was intercepted and apprehended along with the bag in his possession. Owing to the asserted non-availability of private mashirs, police constables Illahi Bux and Shoukat Ali were appointed as mashir in their place. The apprehended accused reportedly disclosed his identity as Kamran alias Dadlo, son of Sikiladho, resident of Bozdar Colony, Mirpur Mathelo, while implicating the fleeing individual as his brother, Sadoro alias Sadroo. Recovered charas from Kamran was said to weigh 265 grams, comprising multiple pieces, 100 grams were sealed for chemical analysis while 165 grams were sealed separately. The discarded shopper from the fleeing accused was retrieved and found to contain charas weighing 225 grams. Of this, 100 grams were likewise sent for chemical examination, and 125 grams sealed separately. The complainant reportedly prepared the mashirnama of arrest and recovery in the presence of mashirs, who allegedly endorsed it with their signatures. The accused and seized contraband were subsequently taken to the police station, where the FIR was formally lodged.

**5.** Learned counsel for the petitioner submitted that the petitioner had been falsely implicated by the police, purportedly due to a longstanding personal vendetta. He drew the Court's attention to the unexplained delay of nearly one hour in the registration of the FIR, notwithstanding the fact that the police station is located at a distance of merely half a kilometer from the alleged scene of occurrence. It was further asserted that the petitioner is gainfully employed in Qatar and had only recently returned to Pakistan to attend the funeral rites of his late father. Documentary proof substantiating this contention was duly placed on the record. It was further contended that despite the availability of modern investigative tools, the recovery was neither video-recorded nor photographed, which is in direct contravention of the statutory mandate contained in Section 17(2) of the Act. Reference was made to authoritative dicta of the Honourable Supreme Court, wherein the imperative of video recording in warrantless recoveries has been consistently underscored. In light of these glaring procedural irregularities, learned counsel urged that the case merited further inquiry within the meaning of Section 497(2) Cr.P.C.

**6.** Conversely, Mr. Aftab Ahmed Shar, the learned Additional Prosecutor General Sindh, opposed the petition, contending that the petitioner was apprehended red-handed with charas, and that the recovery was effected lawfully, in strict adherence to procedural formalities. He submitted that the absence of private mashirs was attributable to the public's general reluctance in narcotics cases, and that police testimony ought not be discarded merely for want of independent witnesses. Allegations of enmity were termed baseless. As to the absence of video recording under Section 17(2), the learned APG conceded that while video evidence is desirable, its non-availability does not vitiate the prosecution case. He argued that, given the gravity of the offence, the petitioner had failed to make out a case for bail.

**7.** We have heard learned counsel for the parties and examined the record with circumspection.

**8.** The record reflects that the alleged recovery from the petitioner amounted to 265 grams of charas, falling within the scope of Section 9(1)-3(a) of the Act, 2024. The prescribed sentence for such a quantity does not

exceed seven years, and therefore the offence does not attract the prohibitory clause of Section 497(1) Cr.P.C., thus making bail the rule and jail the exception. The surrounding circumstances raise serious doubts, the absence of private witnesses, contradictions in the prosecution version, and lack of corroborative evidence render the case fit for further inquiry under Section 497(2) Cr.P.C. Notably, the FIR states that upon apprehension, the petitioner was asked to disclose his name, yet it simultaneously alleges that the police already knew him, which casts doubt on the credibility of the prosecution's narrative. The defence version that the petitioner had recently returned from Qatar to attend the funeral of his father stands supported by documentary evidence, his passport, air ticket, and employment certificate, all of which are annexed from pages 17 to 37 of the record.

**9.** The Honourable Supreme Court has unequivocally held that absence of video evidence and non-association of independent witnesses in narcotics recoveries raises serious doubt upon the integrity of the prosecution case. It was further held that bail may not be denied solely on account of the severity of punishment. Reliance is placed upon the cases of ***Muhammad Abid Hussain v. The State & another (2025 SCMR 721)*** and ***Zahid Sarfaraz Gill v. The State (2024 SCMR 934)***.

**10.** The FIR and recovery was allegedly effected by a Head Constable, who, under the relevant statutory framework, lacks the requisite authority to conduct such operations. It is a well-entrenched principle that in cases hinging solely on police testimony the benefit of doubt must be afforded to the accused, even at the bail stage. Reliance is placed on the case of ***Muhammad Arshad v. The State & another (2022 SCMR 1555)***

**11.** While we emphatically acknowledge the imperative to combat the grave menace posed by narcotics, it is equally essential to safeguard the fundamental rights of the accused. The omission to record the alleged recovery on video, the failure to associate private and independent witnesses, and the disregard of express judicial directives collectively tilt the scales of justice in favour of the petitioner.

**12.** It is a time-honoured and cardinal principle in the administration of criminal justice that the eventual conviction and incarceration of a guilty person may, to an extent, remedy any error occasioned by the grant of interim bail. However, no adequate reparation can be offered to an innocent individual subjected to unjustified incarceration at any stage of the proceedings, even if subsequently acquitted. In this context, reliance may be placed upon the precedent laid down in *Manzoor v. State* (PLD 1972 SC 81).

**13.** Accordingly, in view of the totality of circumstances and the tentative evaluation of evidence, this Court is of the considered view that the matter warrants further investigation. The petition is therefore allowed, and the petitioner is admitted to post-arrest bail, subject to furnishing solvent surety in the sum of Rs.50,000/- with a P.R bond to the satisfaction of Additional Registrar of this Court.

**14.** Needless to observe, the foregoing findings are tentative in nature and shall not prejudice the trial Court in determining the matter on merits.

**15.** Above are the reasons of our short order of even date.

Judge

Judge

*ARBROHI*