

# IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No.D-740 of 2025

**Before:**

*Mr. Justice Arbab Ali Hakro;*

*Mr. Justice Abdul Hamid Bhurgri.*

Petitioner : Zaffar son of Sikiladho,  
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.**- The petitioner through this petition seeks post arrest bail in the crime No.93/2025 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.** The right of access to justice is an inviolable constitutional principle embedded within the broader framework of fundamental rights, including the right to life and liberty guaranteed under Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973. In the present case, the petitioner has approached this Court through constitutional jurisdiction due to the statutory embargo on bail created by Section 35(1) of the Act, 2024. This provision imposes an absolute bar on the jurisdiction of the ordinary criminal courts to grant bail in narcotics cases, thereby depriving the accused of any meaningful statutory forum to seek relief. In such exceptional circumstances, where the statutory regime forecloses ordinary judicial recourse and raises serious concerns over prolonged pre-trial detention without adjudication on merits, the constitutional jurisdiction of the High Court remains open to prevent injustice. The superior courts have held that constitutional jurisdiction is not barred where the petitioner is left remediless due to legislative constraints. The Section 35(1) of the Act, 2024 reads 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.** Therefore, in view of the exceptional nature of the statutory restriction and the absence of any effective legal remedy, this petition is held to be maintainable. Reliance is placed on the judgment of the Honourable Supreme Court in case of ***Khan Asfandiyar Wali v. Federation of Pakistan & others ( PLD 2001 Supreme Court 607)***.

**4.** According to the contents of the FIR registered on 12.05.2025, the complainant, HC Abdul Razak Bhatti, along with his subordinate staff PC Gul Muhammad, PC Sudheer Ahmed, and DPC Altaf Hussain departed from the police station at approximately 0630 hours for routine patrolling, as recorded in roznamcha entry No.30. At around 0730 hours, while patrolling in the vicinity of Jabir Pitafi Maikhano Masoo Wah, the police party reportedly observed an individual approaching on foot from Soomra Colony who, upon noticing the police, attempted to retreat. However, he was intercepted and apprehended by the police near the Irrigation Gate. The FIR further states that, owing to the unavailability of private witnesses, PCs Gul Muhammad and Sudheer Ahmed were appointed as mashirs. Upon preliminary interrogation, the accused identified himself as Zafar Ali Bozdar. A personal search was conducted in the presence of the mashirs, during which charas in the form of pieces was allegedly recovered from the right-side pocket of the accused. The contraband was weighed and found to be 190 grams; 90 grams thereof were segregated and sealed for chemical analysis, while the remaining portion was sealed separately. The complainant proceeded to prepare the mashirnama of arrest and recovery in the presence of the aforementioned mashirs, who duly signed the same in attestation. Subsequently, the accused, along with the recovered narcotics, was taken to the police station, where the FIR was formally lodged.

**5.** Learned counsel for the petitioner/applicant contends that the recovery is of a meagre quantity, falling within the non-prohibitory clause; that the entire case is based upon police officials as witnesses without any independent corroboration, despite the alleged incident having occurred in a thickly populated area; that no video recording or technological evidence

has been collected to substantiate the recovery; that the FIR has been lodged by a police officer not authorized under the law to do so; and that in view of these circumstances, the case is one of further inquiry.

6. Learned Additional Prosecutor General opposes the bail but does not dispute the fact that the quantity of narcotic substance recovered does not fall within the prohibitory clause and that no independent witness has been cited.

7. We have heard the counsel for the parties and have given record to our anxious consideration.

8. The alleged recovery, even if presumed correct at this stage, is of a lesser quantity of 190 grams of charas, thus does not fall within the prohibitory clause. Importantly, the recovery was shown to have been made from a thickly populated locality, yet no independent witness was cited or associated at the time of recovery. It is now well settled principle that where the prosecution's case hinges entirely on police testimony, uncorroborated by natural witnesses, the benefit of doubt is to be extended at the bail stage. Reliance is placed on the case of ***Muhammad Arshad v. The State (2022 SCMR 1555)***.

9. The absence of electronic evidence such as video recording and the questionable competence of the complainant officer further weaken the prosecution's stance. The Honourable apex Court in the case of ***Muhammad Abid Hussain v. The State (2025 SCMR 721)*** has emphasized the indefensible nature of procedural fairness and technical evidence in narcotics cases. It was held that the absence of video footage and independent witness seriously compromise the case of prosecution. Furthermore, in the case of ***Zahid Sarfaraz Gill v. The State (2024 SCMR 934)***, the Court has emphasized on video recording in narcotic cases.

10. Whilst the resolute endeavour to eliminate the malignant threat posed by narcotics warrants unqualified recognition, it is of equal import that the inviolable rights of the accused are scrupulously protected. The omission to record the alleged recovery through videographic evidence, the failure to associate disinterested and neutral witnesses, and the evident

disregard of binding judicial pronouncements, collectively tilt the equilibrium of justice in the petitioner's favour.

**11.** It is an entrenched and time-honoured doctrine within the sphere of criminal adjudication that the eventual conviction and punishment of a guilty party may, in part, redress any error arising from the grant of interim bail. However, no commensurate remedy exists for an innocent individual who suffers unwarranted detention, even where such detention is followed by acquittal. In this context, authoritative guidance is derived from the ruling in *Manzoor v. State* (PLD 1972 SC 81).

**12.** These factors bring the case within the domain of further inquiry under Section 497(2) Cr.PC. Accordingly, this petition is allowed and the petitioner is admitted to post-arrest bail, subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand) with a P.R bond in the like amount to the satisfaction of learned Additional Registrar of this Court.

**13.** Needless to state, the observations hereinabove are tentative in nature and shall not prejudice the trial court in his adjudication of the matter on merits.

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

Judge

Judge

ARBROHI