

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
CP No. D-884 of 2025

(Abdul Qadir v. Raza Muhammad Soomro & Others)

DATE: ORDER WITH SIGNATURE(s) OF JUDGE(s)

Present:

Mr. Justice Abdul Mobeen Lakho
Justice Ms. Sana Akram Minhas

Petitioner / Accused: Through, Mr. Mazhar Ali Laghari, Advocate
Respondent(s): Through, Mr. Muhammad Ismail Bhutto, Additional A.G Sindh
Mr. Irfan Ali Talpur, Assistant Prosecutor General
along with I.O. SIP Muzaffar Hussain Abro
Date of Hearing: 23-6-2025
Date of Decision: 23-6-2025

*FIR No. 194 / 2025 dated 7.5.2025
U/s 9(1) Serial No.3(c), SCNSA, 2024
P.S. CP Nasim Nagar, Qasimabad
Alleged Narcotic Recovered: 1040 grams of Charas*

ORDER

- Sana Akram Minhas, J:** As a preliminary matter, it merits mention that the Petitioner was arrested under the provisions of the ***Sindh Control of Narcotics Substances Act, 2024*** (“**Act 2024**”). Section 35 of the said statute imposes an explicit bar on the grant of bail and excludes the application of Sections 496 and 497 of the *Code of Criminal Procedure, 1898*. Confronted with this statutory restriction, the Petitioner seeks post-arrest bail by invoking the constitutional jurisdiction of this Court.
- This Petition falls for determination before the present Constitutional Bench in pursuance of the directions contained in the Order dated 22.4.2025, passed in CP No.D-937/2025 (*Syed Sahir Hasan v. Province of Sindh & Others*) by a Full Bench of this Court. The said Order clarifies that despite the bar under the Act 2024, bail applications filed through constitutional petitions may still be entertained. The principle finds support in the judgment of the Supreme Court in **Khan Asfandiyar Wali v. Federation of Pakistan (PLD 2001 SC 607)**, which reaffirms that a statutory bar on bail does not curtail the High Court’s jurisdiction under Article 199 of the *Constitution of Pakistan, 1973*.

3. Turning to the present matter, the Petitioner stands nominated in FIR No. 194/2025, registered at Police Station CP Nasim Nagar, Qasimabad, under Section 9(1), Serial No.3(c) of the Act 2024, in connection with the alleged recovery of 1040 grams of charas. Following his arrest, he has sought post-arrest bail through this Petition.
4. Briefly stated, as per the prosecution's version set forth in the subject FIR, during a police patrol on 7.5.2025, while conducting snap checking at the time and place mentioned in the FIR, the police apprehended the Petitioner – who was on foot and attempted to flee upon seeing them – and recovered 1040 grams of charas from his possession during his body search. The recovered substance was seized and sealed on the spot.
5. The learned Counsel for the Petitioner contends that it is not plausible to carry charas of such weight and quantity concealed within the folds of one's clothing; no video recording of the alleged seizure is available; no independent or private witness was present to attest to the recovery or arrest; that the Petitioner has an ongoing civil dispute over immovable property with a named relative, at whose behest the police have allegedly implicated him in a false case. It is further argued that, considering the quantum of sentence – where the minimum punishment is nine (9) years – the offence does not fall within the prohibitory clause of Section 497 Cr.PC, and that in such circumstances, bail is ordinarily granted.
6. On the other hand, both the learned APG and the AAG have opposed the grant of bail. It was averred that the FIR shows that charas was recovered from the Petitioner which was immediately seized and sealed on the spot; the Petitioner's role in relation to commission of the subject offence is specific and clear in the FIR; there was no delay in lodging the FIR; the report of the chemical examiner supports the case of the prosecution; there is no allegation of any malice or ulterior motive on the part of the police.
7. We have heard the respective Counsel and have examined the record.
8. According to the FIR, 1040 grams of charas was recovered from the Petitioner at the time of arrest and was allegedly secured by the police. As per submissions from both sides, the offence falls under a sentencing range of nine (9) to fourteen (14) years imprisonment, along with a fine that may extend to Rs.500,000/-. However, it remains unclear whether the recovered weight refers to the gross or net quantity. The recovered amount marginally exceeds the upper limit prescribed under Section 9(1), Serial No. 3(b) of the Act 2024 – which covers a range of 500 to 999 grams and carries a sentencing range of five (5) to nine (9) years of imprisonment. This renders

the Petitioner's case a borderline one between Serial Nos. 3(b) and 3(c), as the quantity recovered marginally exceeds the threshold of 999 grams – raising a legitimate point of discussion and further inquiry in determining the correct sentencing bracket applicable to the Petitioner i.e. the Petitioner's precise culpability under the relevant statutory provisions. Moreover, while all the witnesses to the incident are police officials, the record does not reflect any effort by the police to associate independent or public witnesses in the proceedings.

9. The law adopts a stringent stance on narcotics-related offences, and bail is not to be granted as a matter of course, given the significant threat such offences pose to societal well-being. This concern underpins the strict bail regime introduced under the newly enacted Act 2024. While not seeking to trivialise the quantity allegedly recovered or the gravity of the offence, it bears noting that the Petitioner has remained incarcerated since 7.5.2025, without any tangible progress in the trial.
10. Pursuant to the Court's earlier direction, a "Progress Report" dated 14.6.2025 has been submitted by the Incharge Sessions Judge, Hyderabad. It states that although the Interim Challan was filed on 21.5.2025, the Investigating Officer (I.O.) has repeatedly sought extensions for submitting the Final Challan on 26.5.2025, 27.5.2025, 31.5.2025, and 5.6.2025. However, as of the date of the Report (i.e. 14.6.2025), the Final Challan had not been filed.
11. Upon Court's query regarding the delay in proceeding with the trial, the learned Assistant Prosecutor General submitted that the Government of Sindh has not yet constituted the Special Courts or appointed judges, as mandated under Section 30 of the Act 2024. This omission on the part of the Government, however, cannot be regarded as a legitimate excuse. The failure to establish Special Courts does not justify any delay in the conduct of trials – particularly in view of the proviso to Section 30(3), which expressly stipulates that, until such courts are constituted, existing competent courts shall continue to function for the expeditious disposal of narcotics cases. The relevant proviso is reproduced below:

30. Establishment of special court:

- (1)
- (2)
- (3)

Provided that until the Special Courts are established under this section, the existing competent court shall continue to perform its functions for the speedy disposal of narcotics cases.

12. The prospect of prolonged incarceration of the Petitioner, absent any meaningful progress in trial proceedings, constitutes a denial of his fundamental right to a fair and expeditious trial as guaranteed under Section 35(2) of the Act 2024, which mandates the conclusion of trials within six (6) months. Given the delay and the quantity involved, the Petitioner has made out a case for the grant of post-arrest bail.
13. Accordingly, by our short order today (i.e. 23.6.2025), the Petitioner was admitted to post-arrest bail upon furnishing a solvent surety in the sum of Rs.200,000/- (Rupees Two Lacs only), along with a P.R. Bond in the like amount to the satisfaction of the Additional Registrar of this Court. This is why.
14. The Petitioner shall ensure his attendance on all dates before the Trial Court. The observations made in this order are tentative and the Trial Court shall not be influenced by the same while deciding the case on merits.
15. The Petition stands disposed of in the above terms.

JUDGE

JUDGE