

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
**Constitution Petition No.D-937 of 2025**

Date	Order with signature of Judge
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PRESENT:  
***Mr. Justice Muhammad Junaid Ghaffar, ACJ***  
***Mr. Justice Zafar Ahmed Rajput &***  
***Mr. Justice Muhammad Iqbal Kalhoro, JJ's***

HEARING OF CASE:  
1. For order on office objection.  
2. For hearing of Main Case.  
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**Dated: 22<sup>nd</sup> April 2025**

M/s. Manzar Bashir Memon, Habibullah Masood, Faraz Faheem and Allah Dino, Advocates for Petitioner.

Mr. Ali Haider Salim, Additional Prosecutor General Sindh.

Mr. Naeem Akhtar Talpur, Additional Advocate-General, Sindh.

**ORDER**

***Muhammad Junaid Ghaffar, ACJ : --*** This Larger Bench has been constituted pursuant to three different orders dated 26.03.2025 and 15.04.2025 by a Regular Bench of this Court vis-à-vis order dated 03.04.2025 passed by a Constitutional Bench of this Court. Both the benches have differed on the issue as to which bench has to hear this petition. These three orders read as under: -

**26<sup>th</sup> March, 2025. (By Regular Bench<sup>1</sup>)**

*M/s. Manzar Bashir Memon & Habibullah Masood, Advocates for the petitioner.*  
*Mr. Abrar Ali Khichi, Addl. Prosecutor General, Sindh.*  
*Mr. Hakim Ali Shaikh, Addl. Advocate General Sindh.*  
*Mr. Sagheer Ahmed Abbasi, Asstt. Advocate General.*

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1. Since under section 35(1) of the Sindh Control of Narcotics Substance Act, 2024, the jurisdiction of this Court is barred to grant bail under Section 496 and 497 Cr.P.C to an accused person charged with an offence under the said Act, the petitioner seeks through instant

<sup>1</sup> Comprising Zafar Ahmed Rajput & Mrs. Tasneem Sultana JJ's.

*Constitution Petition post arrest bail, on the ground of enforcement of fundamental right, in view of dictum laid down by the Apex Court in the case of Khan Asfandiyar Wali, reported in PLD 2001 Supreme Court, 607, hence, the matter pertains to Constitutional Bench of this Court.*

*Learned counsel for the petitioner as well as learned Additional Advocate General and Additional Prosecutor General, Sindh record their no objections for placing this matter before the Constitutional Bench. Accordingly, office is directed to place this matter before the Constitutional Bench.*

*At this juncture, learned counsel for the petitioner pleads urgency and request for short date.*

*To come up on **28.03.2025**.*

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**03.04.2025. (Constitutional Bench<sup>2</sup>)**

*Mr. Habibullah Memon, Advocates for the Petitioner.  
Ms. Hina, Assistant Prosecutor General Sindh.  
Mr. K.A. Vaswani, Assistant Advocate General Sindh.*

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*This is a post arrest bail application. Propriety demands that this matter should be heard before a regular bench of this Court which deals with the bail matters. As such office is directed to fix this matter before a regular bench of this Court for hearing within 02 weeks of the date of this order.*

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**15.04.2025 (Regular Bench<sup>3</sup>)**

*M/s. Manzar Bashir Memon & Habibullah Masood, Advocates for the petitioner.*

*Mr. Abrar Ali Khichi, Addl. Prosecutor General.*

*Mr. Hakim Ali Shaikh, Addl. Advocate General Sindh.*

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*Through this Constitutional Petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 ("the Constitution"), the petitioner seeks post-arrest bail in Crime/F.I.R. No.29/2025, under (Section 6/9-3(B) Sindh Control of Narcotics Substances Act, 2024 ("Act of 2024") registered at P.S. Special Investigation Unit (SIU) South-Karachi*

*This Court vide order dated 26.03.2025 has observed as under:*

*"Since under section 35(1) of the Sindh Control of Narcotics Substance Act, 2024, the jurisdiction of this Court is barred to grant bail under Section 496 and 497 Cr.P.C. to an accused person charged with an offence under the said Act, the petitioner seeks through instant Constitution Petition post arrest bail, on the ground of enforcement of fundamental right, in view*

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<sup>2</sup> Comprising Muhammad Karim Khan Agha and Adnan-ul-Karim Memon JJ's

<sup>3</sup> Comprising Zafar Ahmed Rajput & Mrs. Tasneem Sultana JJ's.

of dictum laid down by the Apex Court in the case of Khan Asfandiyar Wali, reported in PLD 2001 Supreme Court, 607, hence, the matter pertains to Constitutional bench of this Court.

Learned counsel for the petitioner as well as learned Additional Advocate General and Additional Prosecutor General, Sindh record their no objections for placing this matter before the Constitutional Bench. Accordingly, office is directed to place this matter before the Constitutional Bench."

Thereafter the matter was fixed before the Constitutional Bench of this Court on 03.04.2025 when the said Bench passed the order, as under:-

"This is a post arrest bail application. Propriety demands that this matter should be heard before a regular bench of this Court which deals with the bail matters. As such office is directed to fix this matter before a regular bench of this Court for hearing within 02 weeks of the date of this order."

It may be relevant to refer here relevant paragraph 197 of the Khan Asfandiyar Wali case (supra), as under:-

"197. It was held in the case of Zafar Ali Shah (supra) that the powers of the superior Courts under Article 199 of the Constitution "remain available to their extent....notwithstanding anything contained in full any legislative instrument enacted by the chief executive." Whereas, section 9(b) of the NAB Ordinance purports to deny to all Courts, including the High Courts, the jurisdiction under sections 426, 491, 497, 498 and 561A or any other provision of the Code of Criminal Procedure or any other law for the time being in force, to grant bail to any person accused of an offence under the NAB Ordinance, it is well settled that the Superior Courts have the power to grant bail under Article 199 of the Constitution, independent of any statutory source of jurisdiction such as Section 497 of the Criminal procedure Code."

It may be observed that in view of Article 202A(3) of the Constitution, the Constitutional Bench of this Court exercises jurisdiction vested in the High Court under subparagraph (i) of paragraph (a) and paragraph (c) of clause (1) of Article 199 of the Constitution, which pertains to issuance of Writ of Mandamus and Enforcement of Fundamental Rights, respectively. While Regular Benches of High Court exercise jurisdiction regarding subject matters falling under subparagraph (ii) of paragraph (a) and subparagraph (i) and (ii) of paragraph (b) of clause (1) of Article 199 of the Constitution, which relate to issuance of Writs of Certiorari, Habeas Corpus and Quo Warranto.

The relief sought by the petitioner through instant petition i.e. grant of post-arrest bail, which in view of section 35(1) of the Act, of 2024 cannot be entertained as a "legal right"; it can only be entertained as constitutional/fundamental right under Article 199 of the Constitution.

Since both the Benches have conflicting views, we deem it appropriate to refer the matter to Hon'ble Acting Chief Justice of Sindh High Court for passing appropriate orders.

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Heard learned counsel for the Petitioner as well as learned Addl. Prosecutor General and Addl. Advocate-General, Sindh and perused the record.

This is a Petition seeking post-arrest bail pursuant to registration of an FIR No.29/2025 for the offence under sections 6/9-3(B) of the Sindh Control of Narcotic Substances Act, 2024 registered at PS Special Investigation Unit (SIU), South-Karachi. It appears that pursuant to promulgation of Sindh Control of Narcotic Substances Act, 2024, (in Province of Sindh) including Section 35(1), the jurisdiction of trial Court; or for that matter, the power to grant bail under sections 496 and 497, Cr.P.C. has been ousted and, therefore, the Petitioner, who is in custody, has filed this Petition under Article 199 of the Constitution. The Constitutional jurisdiction of a High Court under Article 199 of the Constitution, for dealing such matters wherein the provisions of Sections 496 and 497, Cr.P.C. are not available or where the jurisdiction of a trial Court is ousted, has already been dealt with and interpreted by the Hon'ble Supreme Court of Pakistan in the case of Khan ***Asfandyar Wali and others v. Federation of Pakistan through Cabinet Division, Islamabad and others*** [**PLD 2001 SC 607**] wherein it has been held that notwithstanding such ouster clause, a High Court can still exercise its jurisdiction under Article 199 of the Constitution for grant of bail or otherwise. Such exercise of jurisdiction apparently falls under enforcement of fundamental rights as provided under Chapter 1 of Part II of the Constitution, including but not limited to, Articles 8, 9, 10, 10A, & 14; and such enforcement of the fundamental rights is provided under Article 199(1)(c) of the Constitution. Post 26<sup>th</sup> Amendment to the Constitution and incorporation of Article 202A(3), no Bench of a High Court other than a Constitutional Bench can exercise jurisdiction vested in the High Court under

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paragraph (c) of sub-article (1) of Article 199 of the Constitution and in that case, a Regular Bench cannot hear and enforce such fundamental rights while exercising jurisdiction under Article 199(1)(c) *ibid.* even otherwise, if for some reason there is a case which has some overlapping issues falling within a larger and broader perspective under Article 199 (1) of the Constitution, then the Constitutional Bench can always hear such a case as it is not denuded with such powers.

Therefore, this petition for grant of post arrest bail in Constitutional jurisdiction has to be heard and decided by a Constitutional Bench / judges nominated by the Judicial Commission of Pakistan in terms of Article 202A(3) of the Constitution.

In view of the above, the proposed issue is answered accordingly, and the matter shall be placed before a Constitutional Bench of this Court according to their roster on the next date. Since this is a post-arrest bail matter, therefore, office is directed to fix this matter on **24.04.2025**.

**ACTING CHIEF JUSTICE**

**JUDGE**

**JUDGE**

\*Farhan/PS\*

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