

ORDER SHEET
**HIGH COURT OF SINDH CIRCUIT COURT,
HYDERABAD**

CP. No. D- 1040 of 2025
[Allah Wasayo v. The State & another]

BEFORE:

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Yousuf Ali Sayeed

Petitioner : Through Mr. Shabeer Hussain Memon, Advocate

Respondent : Through Mr. Muhammad Ismail Bhutto, Addl. A.G. &
Mr. Siraj Ahmed Bijarani A.P.G

Date of hearing
& Decision: 08.07.2025

ORDER

ADNAN-UL-KARIM MEMON J:- Petitioner Allah Wasayo has filed this Constitutional Petition seeking pre-arrest bail in FIR No. 158 of 2025 registered at Police Station Kotri district Jamshoro under Section 9(2)(3) of the Sindh Control of Narcotic Substances Act, 2024.

2. During a patrol in Nango Lane Kotri, ASI Allah Warayo Panhwar observed the petitioner and co-accused Ahsan Burfat openly selling "ice" outside their house. The complainant arrested Ahsan Burfat recovering 55 grams of "ice" and three 100-rupee notes from him. The petitioner however; escaped, discarding a white shopper bag containing an additional 60 grams of "ice," which the complainant also seized. The "ice" was then sealed and an FIR was registered.

3. The petitioner's counsel argued for pre-arrest bail, asserting the petitioner's innocence and false implication due to malicious intent. The counsel highlighted the absence of private witnesses despite the incident occurring in a populated area, emphasizing that the case relies solely on the statements of interested police officials. He also contended that a meager quantity of contraband was planted on the petitioner in his absence; therefore, *mala fide* of the police cannot be ruled out. He prayed for confirmation of pre-arrest bail of the petitioner in terms of order dated 5.6.2025.

4. Learned A.P.G has objected to the grant of bail to the petitioner on the ground that ice was recovered from the possession of co-accused; however, he fled away from the place of incident. The petitioner has failed to show any enmity and/or malafide on the part of police. Learned Additional A.G. adopted the arguments of learned APG. However, they both conceded that the petitioner has no previous criminal record.

5. Heard learned counsel for the parties and perused the record with their assistance.

6. Co-accused Ahsan was granted post-arrest bail by the trial court vide order dated 21.4.2025. This decision was based on the principle that Section 35 of the Sindh Control of Narcotic Substances Act, 2024, despite its restrictive language, does not entirely remove judicial discretion for bail. Superior courts consistently hold that a complete ban on bail is unconstitutional. Bail can be granted when the offense does not fall within the prohibitory clause of Section 497(1) Cr.P.C, when the case requires further inquiry, or due to mitigating / humanitarian considerations. Thus, Section 35 is interpreted as directory not mandatory, harmonizing with broader criminal law and constitutional protections. The trial court noted that the offense under Section 9(1)(3)(b) carries a sentence of five to nine years, placing it outside the prohibitory clause of Section 497(1) Cr.P.C. The applicant was in judicial custody, not needed for further investigation and all the prosecution witnesses are police officials minimizing tampering risk. Therefore, the case required further inquiry under Section 497(2) Cr.PC, leading to the grant of bail for co-accused Ahsan, subject to furnishing solvent surety in the sum of Rs. 50,000/- [Fifty Thousand]. However, the petitioner's case is on better footing as he was not arrested at spot, and his name was allegedly provided either by the police or the co-accused. This raises the possibility of malafide intention of police, which cannot be ruled out at this stage under Section 498 Cr.PC.

7. Besides the improbable nature of the prosecution's story, the absence of petitioner from the scene of offence; the meagre quantity of narcotics alleged against the principal accused, the punishment of the alleged recovery is less than five years, and the petitioner has no prior criminal record. As such, this Constitutional Petition for pre-arrest bail has force, hence for these reasons we by our short order of even date, confirmed the bail of petitioner on the same terms and conditions as granted to him vide order dated 5.6.2025.

8. The observations made hereinabove are tentative and ought not to influence the case or the trial.

Disposed of.

J U D G E

J U D G E

Karar_Hussain/PS*