

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

CP. No. D- 1100 of 2025
[Madiha Shah v. The State & another]

BEFORE:

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

Petitioner : Through Mr. Babar Ali Meerani 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 Madiha Shah prays for her release on post-arrest bail in connection with FIR No. 66 of 2025 registered at Police Station Jamshoro under Section 9(1)(3)(c) of the Sindh Control of Narcotic Substances Act, 2024.

2. Case of the prosecution is that that on March 14, 2025 at 6:00 A.M, a police team headed by ASI Imran Ali Halepoto arrested the petitioner near Bhalai Chowk Main Bazar Jamshoro and recovered 1550 grams of charas from her. The recovery was witnessed by P.C Ali Gul Panhwar and P.C Ghulam Mohiuddin Shahani. Subsequently such FIR was registered. However, after submissions of challan, no witnesses have been examined by the trial court.

3. At the first instance counsel argued that the Petitioner is a transgender individual; before being falsely implicate in the subject crime, the police committed sodomy with her and thereafter foisted the alleged recovery of charas; that when the petitioner was produced before the concerned Magistrate, the petitioner reported the mistreatment of police with her, leading to a referral for medical examination and DNA report, which is currently pending. This report, the counsel contends, will corroborate the petitioner's claims. On merits counsel argued that the recovered contraband fall within the borderline range of the Sections of the Act, 2024, which makes the case eligible for bail. The counsel emphasized that the police has misused their power and authority, thus liable for

departmental as well as criminal action against them under the law. Given the petitioner's vulnerability as a transgender individual, continued custody could result in irreparable harm; therefore, he prayed for post-arrest bail to the petitioner.

4. Learned APG has objected to the grant of bail to the petitioner on the ground that the petitioner was arrested at the spot and huge quantity of chars was recovered from her physical possession; that the petitioner has failed to show any enmity and / or *mala fide* on the part of police. Learned Additional A.G. also adopted the arguments of learned A.P.G. and further submitted that the Petitioner is transgender individual, who was admitted to Special Prison & C.F. for Women Hyderabad on March 14, 2025, for a case under Section 9(1)3-E Sindh CNS Act 2024. Due to her identity, she was housed separately in Cell No. 02. On March 16, 2025, petitioner attempted to suicide by "Dupata" in her cell but was immediately saved by staff. Medical examination found her condition is stable. A report of this incident was submitted to Civil Judge & Judicial Magistrate-II, Kotri, on March 17, 2025. Following court directives and medical advice, petitioner was referred for medical examination at LUHMS Hyderabad on March 18, 2025, with police escort. After examination, she was taken back to the prison, and the medical certificate was submitted to the Additional District & Sessions Judge, Kotri, on March 26, 2025, requesting her transfer to Youthful Offenders Industrial School, Hyderabad. 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. The fact that the police submitted the case property for chemical examination three days after the petitioner's arrest, on March 17, 2025, raises doubts about the secure handling of the evidence by the prosecution. The petitioner's bail under the Sindh Control of Narcotic Substances Act, 2024, is prima facie warranted due to procedural irregularities regarding sealing and delayed transmission of the alleged Narcotic Substance to the Lab. The prosecution case relies solely on the statements of police officials against whom there are serious allegations of committing unnatural offence and physical abuse. The petitioner's prolonged incarceration since March 14, 2025, with no significant trial progress, prima facie violates her fundamental right to liberty under Article 9 of the Constitution. This is further exacerbated by the State's delay in establishing Special Courts under the new Act. While Section 35 of the Sindh CNS Act, 2024, restricts trial courts from granting bail, however, this Court's constitutional

jurisdiction under Article 199 of the Constitution remains intact. This allows intervention when fundamental rights are violated or a miscarriage of justice is apparent, especially given the procedural flaws and doubts in the prosecution case. In such circumstances, granting bail aligns with the presumption of innocence and the principle that bail should not be withheld as punishment, especially when the case requires further inquiry. The Supreme Court's emphasis on modern devices in narcotic cases to prevent false implication further supports the need for inquiry here, given the alleged police involvement.

7. The Supreme Court has granted bail in similar cases involving significant heroin recovery, such as *Ateebur Rehman v. The State* (**2016 SCMR 1424**) (1014 grams) and *Aya Khan and another v. The State* (**2020 SCMR 350**) (1100 grams). Granting bail does not imply acquittal; it merely shifts custody from the police to sureties, who ensure the accused's presence as required. This principle is supported by the case of *Haji Muhammad Nazir v. The State* (**2008 SCMR 807**).

8. Considering the circumstances discussed, this Constitutional Petition for bail appears to be made out.

9. These are the reasons for our short order of even date, by which the Petition for bail was allowed and the Petitioner was granted post-arrest bail in Crime No. 66 of 2025 registered at P.S. Jamshoro under Section 9(1)(3)(c) of the Sindh Control of Narcotic Substances Act, 2024, subject to furnishing solvent surety in the sum of Rs. 20,000/- and P.R. Bond in the like amount to the satisfaction of trial Court.

10. The observation recorded hereinabove is tentative and shall not prejudice the case of either party at trial. However, the IGP Sindh should inquire into the matter, if proved, take action departmental action as well as criminal proceedings against the police officials involved in such offence.

Office to send a copy of this order to IGP Sindh for compliance.

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