

**IN HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

C.P No. D-749 of 2025
[Badshah Gul v. The State & others]

Before:
Mr. Justice Arbab Ali Hakro
Mr. Justice Riazat Ali Sahar

Counsel for Petitioner:	Mr. Mumtaz Ali Panhwar, Advocate
Counsels/ Representatives for Respondents:	Mr Siraj Ahmed Bijarani, APG
Date of Hearing	27.05.2025
Date of Judgment	27.05.2025

JUDGMENT

RIAZAT ALI SAHAR, J. Through this judgment, we intend to dispose of captioned petition, wherein the following relief is sought:-

“That, this Honourable Court may kindly be pleased to enlarge petitioner / accused on bail in connection with FIR No. 68/2025 registered at PS Hali Road, Hyderabad u/s 6, 9 (1) 3 (c) CNS Amendment Act 2024.

That, this Honourable Court may kindly be pleased to declare the arrest of petitioner / accused is beyond the scope of Section 17 (2) as well as 17 (3) of Sindh Control of Narcotics Substance Act 2024 as the present FIR is registered in sheer violation of express provision of the law.

That, any other relief(s) which deems fit, just and proper may be awarded in favour of the petitioner / accused.”

2. There exists no express provision regarding the grant of bail under the Sindh Control of Narcotics Act, 2024 (hereinafter

referred to as “the Act”), as is evident from the language employed in Section 35, which reads as under:-

35. No bail is to be granted in respect of certain offences- (1) *Notwithstanding anything contained in sections 496 and 497 of the Code, the bail shall not be granted to an accused person charged with an offence under this Act.*

However, as per the order dated 22-04-2025 passed by the Larger Bench of this Court at its Principal Seat in Constitutional Petition No. D-937 of 2025, the Honourable Acting Chief Justice of Sindh, being the author of the judgment, was pleased to lay down that in view of the absence of any provision regarding the grant of bail under the Sindh Control of Narcotics Act, 2024 (“the Act”), all matters pertaining to bail under the said Act shall fall exclusively within the domain of the Constitutional Bench of the High Court of Sindh for consideration under its constitutional jurisdiction.

3. Tersely, allegation against petitioner is that on 03.05.2025 at 0130 hours, SIP and staff of PS, acting on secret information, apprehended a suspect, Badshah Gul, near the Railway Workshop wall as he attempted to flee with a black plastic shopper. Upon search, 1495 grams of charas in three large pieces were recovered. The accused admitted to selling charas for livelihood. Due to lack of private witnesses, police officials acted as mashirs. The charas was sealed for chemical analysis and an FIR under Section 9(1) (3) (c) of the CNS Amendment Act, 2024 was lodged against him.

4. Mr. Mumtaz Ali Panhwar, learned counsel for the petitioner, contends that there exist no reasonable grounds to believe

that the petitioner has committed the alleged offence under Section 9(c) of the Sindh Control of Narcotic Substances Act, 2024. He asserts that the FIR was lodged with mala fide intent, instigated by a politically influential figure as retaliation against the petitioner's peaceful protest concerning water scarcity. The learned counsel maintains that no narcotics were recovered from the petitioner's exclusive possession and that both the arrest and recovery were orchestrated at the police station itself. He further argues that the FIR is vitiated by serious legal flaws, particularly the failure to associate any independent witnesses despite the occurrence being in a thickly populated area, thus violating the spirit of Section 103 Cr.P.C. Additionally, it is pointed out that the mandatory video recording under Section 17(2) of the amended Act was not conducted. All prosecution witnesses, according to him, are police personnel with vested interests, and there is a complete absence of independent corroboration, rendering the case doubtful. Counsel also emphasises the petitioner's clean prior record, established local residence, and readiness to cooperate with the investigation, submitting that pre-trial incarceration in such circumstances amounts to premature punishment. He contends that in the event of eventual acquittal, the loss of liberty cannot be remedied. Therefore, he pleads that bail be granted on the grounds of further inquiry, malice, and absence of reliable evidence.

5. Mr. Siraj Ahmed Bijarani, the learned Assistant Prosecutor General, vigorously opposes the bail plea, asserting that the petitioners were apprehended red-handed in possession of a

commercial quantity of charas, falling squarely within the ambit of Section 9(c) of the Sindh Control of Narcotic Substances Act, 2024, which attracts the prohibitory clause of Section 497 Cr.P.C. He submits that the recovery was effected pursuant to reliable intelligence and in strict compliance with legal formalities, including proper documentation and timely dispatch of the contraband for chemical analysis. The learned APG explains that the absence of private mashirs is neither unusual nor indicative of mala fide, as public citizens are generally hesitant to participate in narcotics-related proceedings. He argues that the testimony of police officials cannot be disregarded merely on the ground that they are official witnesses. He further dismisses the petitioner's claims of political victimisation as unsubstantiated and lacking any credible material. While acknowledging that video recording under Section 17 (2) of the amended Act is a recommended safeguard, he contends its non-availability does not render the prosecution's case defective. In view of the serious nature of the offence, the substantial quantity of the recovered narcotics, and the statutory presumption under the law, the petitioners have failed to demonstrate any ground warranting further inquiry. As such, he maintains that they are not entitled to the relief of bail.

6. Heard. Record Perused.

7. The Court underscores that Section 35 of the Sindh Control of Narcotic Substances Act, 2024, serves a dual purpose: firstly, it seeks to deter narcotics offences by restricting the grant of

bail in serious cases; secondly, it ensures expeditious dispensation of justice by mandating that trials be concluded within six months, thereby safeguarding accused individuals from unnecessary pre-trial incarceration. In support of procedural fairness, Section 17(2) mandates video recording of warrantless searches and recoveries, a safeguard designed to ensure transparency and prevent abuse of authority—an approach upheld in *Zahid Sarfraz Gill v. The State [2024 SCMR 934]* and *Muhammad Abid Hussain v. The State [2025 SCMR 721]*. The Court also clarifies that while the volume of narcotics recovered may *prima facie* invoke the prohibitory clause under Section 497 Cr.P.C. such inclusion does not operate as an absolute bar to bail. The key issue is whether the prosecution has established a prima facie credible recovery and whether the defence has raised reasonable doubt warranting further inquiry under Section 497(2) Cr.P.C.—without turning the bail hearing into a de facto trial. Further elaboration on this legal doctrine is available in *Syed Amjad Shah and another v. The State and others [C.P. No. D-797 of 2025, High Court of Sindh, Circuit Court Hyderabad]*.

8. In the present case, the alleged recovery of 1495 grams of charas falls within the scope of Section 9 (i) 3 (c) of the Control of Narcotic Substances Act. This provision prescribes a punishment ranging from a minimum of nine years to a maximum of fourteen years, along with a fine between one hundred thousand and five hundred thousand rupees. Notably, the prescribed minimum

sentence of nine years does not meet the threshold of the prohibitory clause under Section 497 (1) Cr.P.C., which is triggered only when the minimum sentence is ten years or more. Accordingly, the offence, on its face, does not attract the prohibitory bar to bail. Additionally, the arrest is stated to have occurred during daylight hours, making it highly improbable that no private persons were available to serve as mashirs in support of the alleged recovery. While it is true that Section 103 Cr.P.C. does not apply to narcotics offences due to its exclusion under Section 25 of the CNS Act, the procedural safeguards under Section 17(2) of the amended Act assume critical importance. This section requires that all warrantless seizures, searches, and arrests be recorded via video or supported with photographic evidence. These procedural protections are vital to substantiate the legality of the recovery and the manner in which the arrest was effected. However, the record reveals that the police failed to comply with these mandatory requirements, thereby seriously undermine the credibility of the prosecution's version of events. These procedural lapses and inconsistencies give rise to substantial doubt, placing the matter within the purview of further inquiry as envisaged under Section 497(2) Cr.P.C. It is also worth reiterating the established principle affirmed by the Honourable Supreme Court in *Muhammad Arshad v. The State [2022 SCMR 1555]*, which holds that even at the bail stage, the benefit of doubt may be extended where the circumstances so warrant.

9. In light of the above discussion, it is evident that the prosecution has not furnished the requisite video or photographic evidence as stipulated under Section 17 (2) of the Sindh Control of Narcotic Substances Act, 2024, thereby casting substantial doubt over the legitimacy of the alleged recovery and arrest. Additionally, the failure to associate private mashirs—despite the incident purportedly taking place in a public and accessible location—and the absence of independent corroboration, significantly weaken the prosecution’s version of events. More so, sections 16, 17 and 18 under Chapter-II of the Act are interconnected with each other. It is also pertinent to note that the minimum punishment prescribed for the alleged offence does not attract the prohibitory clause under Section 497 Cr.P.C. Given these deficiencies, and considering that the petitioners have succeeded in raising grounds warranting further inquiry under Section 497(2) Cr.P.C. *prima facie*, it appears that the material on record does not connect petitioner to the commission of offence. Accordingly, this petition is accepted. The petitioner, Badshah Gul son of Muhammad Yousuf, shall be admitted to bail upon furnishing a solvent surety in the sum of Rs. 200,000/- (Rupees Two Hundred Thousand only) and a personal bond in the same amount to the satisfaction of the learned trial Court.

10. It is clarified that the observations made herein are tentative in nature and shall have no bearing on the merits of the case at the stage of trial.

JUDGE

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