IN HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P No. D-809 of 2025
[Abdul Rauf v. The State & others]

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

Counsel for Petitioner:	Mr. Zahid Ali Khoso, Advocate
Counsels/ Representatives for Respondents:	Mr Siraj Ahmed Bajarani, 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:

> *"A) That this Honourable Court may be pleased to admit the petitioner on post arrest bail in the present case upon furnishing solvent surety to the satisfaction of the Honourable court.*
> *B) Any other relief deemed fit and proper that this Court may be awarded to the petitioner."*

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, the allegation against petitioner is that on 01.05.2025 at 2130 hours, SIP and police staff of PS Hali Road, Hyderabad, acting on spy information, apprehended Abdul Rauf s/o Muhammad Umar near Eidhi Centre Ground, Makrani Para, in possession of a black shopper containing 2.070 kilograms of charas. The recovery was video-recorded via mobile phone. The accused admitted to selling charas for livelihood. Due to unavailability of private mashirs, police officials acted as witnesses. The contraband was seized and an FIR was lodged under Section 9 (1) (3) (c) of the CNS Amended Act, 2024.

4. Mr. Zahid Ali Khoso, learned counsel for the petitioner, contends that there are no reasonable grounds to establish the petitioner's involvement in the alleged offence under Section 9 (c) of the Sindh Control of Narcotic Substances Act, 2024. He asserts that the FIR was registered with *mala fide* intent, allegedly motivated by a politically influential individual as retaliation for the petitioner's peaceful demonstration concerning water scarcity. He argues that no narcotics were recovered from the petitioner’s exclusive possession, and the arrest and recovery proceedings were, in fact, fabricated and conducted at the police station. The counsel highlights critical procedural irregularities in the FIR, especially the failure to include any independent mashirs, despite the supposed occurrence in a densely populated area, thereby contravening the principle underlying Section 103 Cr.P.C. He also draws attention to the prosecution's disregard for Section 17(2) of the amended Act, which requires video recording of all warrantless arrests and recoveries. He emphasizes that all prosecution witnesses are police officials with potential bias, and no impartial or independent evidence has been produced, significantly undermining the credibility of the case. Furthermore, the petitioner’s unblemished record, established local residence, and willingness to cooperate with the investigation are cited as grounds demonstrating that continued detention would amount to pre-trial punishment. He argues that if ultimately acquitted, the petitioner would have suffered an irreparable violation of liberty. Accordingly, bail is sought on grounds of mala fide prosecution, lack of reliable evidence, and the matter qualifying as one of further inquiry under Section 497(2) Cr.P.C.

5. Mr. Siraj Ahmed Bajarani, the learned Assistant Prosecutor General, strongly opposes the petitioners' request for bail, asserting that they were caught in the act while possessing a commercial quantity of charas, thereby falling squarely within the scope of Section 9(c) of the Sindh Control of Narcotic Substances Act, 2024. He maintains that the offence attracts the prohibitory clause of

Section 497 Cr.P.C. and that the recovery was carried out based on credible intelligence, strictly adhering to legal protocols, including accurate documentation and prompt submission of the seized narcotics for chemical analysis. The learned APG explains that the absence of private mashirs does not suggest any wrongdoing, as members of the public are generally reluctant to involve themselves in narcotics-related cases due to fear or lack of interest. He further argues that the testimony of police officials should not be discredited merely because of their official position. He dismisses the allegations of political victimisation as baseless and unsupported by any credible evidence. While acknowledging that video recording under Section 17(2) of the amended Act is a recommended procedural safeguard, he contends that its absence does not invalidate the prosecution's case. In view of the grave nature of the charges, the substantial quantity of drugs recovered, and the statutory presumption of guilt attached to such offences, he submits that the petitioners have failed to present any tenable ground for further inquiry. Therefore, he concludes that they are not entitled to the grant of bail.

6. Heard. Record Perused.

7. The Court highlights that Section 35 of the Sindh Control of Narcotic Substances Act, 2024, performs a twofold function: firstly, it aims to suppress narcotics-related crimes by limiting bail in serious offences; secondly, it upholds the right to a speedy trial by requiring proceedings to conclude within six months, thus preventing undue pre-trial detention. To reinforce procedural safeguards, Section 17 (2) mandates video recording of warrantless searches and recoveries—an essential mechanism for ensuring transparency and preventing misuse of power, as endorsed in ***Zahid Sarfraz Gill v. The State [2024 SCMR 934]*** and ***Muhammad Abid Hussain v. The State [2025 SCMR 721].*** The Court further clarifies that while the quantity of recovered narcotics may initially attract the prohibitory clause under Section 497 Cr.P.C., this does not constitute an absolute restriction on the grant of bail. The central question remains whether the prosecution has established a prima facie credible recovery, and whether the defence has raised sufficient doubt to warrant further inquiry under Section 497(2) Cr.P.C., without converting the bail stage into a full-fledged trial. A more detailed interpretation of this principle can be found 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 instant case, the alleged seizure of 2070 grams of charas falls within the scope of Section 9 (i) 3 (c) of the Control of Narcotic Substances Act, which prescribes a punishment of not less than nine years and up to fourteen years' imprisonment, along with a fine ranging from one hundred thousand to five hundred thousand rupees. Notably, the minimum sentence of nine years does not meet the threshold required to attract the prohibitory clause under Section 497 (1) Cr.P.C. which is triggered only where the minimum punishment is ten years or more. Accordingly, the offence does not, on the face of it, bar the grant of bail. Moreover, since the arrest purportedly occurred in broad daylight, it appears unlikely that no private individuals were available to serve as mashirs. While Section 103 Cr.P.C. is inapplicable to offences under the CNS Act by virtue of Section 25, the procedural safeguard provided under Section 17(2) of the amended Act assumes particular importance. This provision mandates that warrantless recoveries, searches, and arrests be documented through video recording or photographs to ensure the legitimacy and transparency of the law enforcement process. In the present matter, the record indicates that these safeguards were not followed, significantly undermining the credibility of the prosecution's narrative. Such lapses and procedural irregularities give rise to serious doubt regarding the genuineness of the alleged recovery and arrest, thus clearly placing the case within the ambit of further inquiry as contemplated under Section 497(2) Cr.P.C. It is also pertinent to refer to the established principle laid down by the Honourable Supreme Court in ***Muhammad Arshad v. The State [2022 SCMR 1555]***, which affirms that the benefit of doubt may be granted even at the bail stage, if the circumstances so warrant.

9. In view of the foregoing analysis, it is apparent that the prosecution has failed to produce the mandatory video or photographic evidence as required under Section 17(2) of the Sindh Control of Narcotic Substances Act, 2024. This omission casts serious doubt on the authenticity of the alleged recovery and arrest. Furthermore, the non-association of private mashirs—despite the incident allegedly occurring in a public and accessible area—and the absence of any independent corroborative material, further diminish the credibility of the prosecution's case. More so, sections 16, 17 and 18 under Chapter-II of the Act are interconnected with each other. It is equally relevant to observe that the minimum sentence prescribed for the charged offence does not fall within the prohibitory clause contemplated under Section 497 Cr.P.C. *prima facie*, it appears that the material on record does not connect petitioner to the commission of offence. In light of these procedural shortcomings and given that the petitioner has successfully raised grounds for further inquiry under Section 497(2) Cr.P.C., we are persuaded that he is entitled to the grant of bail in the interest of justice, due process, and to prevent potential abuse of prosecutorial discretion. Accordingly, this petition is allowed. The petitioner, Kashif son of Muhammad Umar, shall be released on bail upon furnishing a solvent surety in the sum of Rs. 200,000/- (Rupees Two Hundred Thousand only), along with a personal bond in the like amount, to the satisfaction of the learned trial Court. It is further clarified that the observations made in this order are provisional in nature and shall not prejudice the outcome of the trial.

JUDGE

JUDGE

Abdullahchanna/PS