

IN HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD

C.P No. D-816 of 2025
[Sagar 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 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:

“That, this Honourable Court may kindly be pleased to enlarge the petitioner / accused on bail in connection with FIR No. 121/2025 registered at PS Bhitai Nagar, Hyderabad u/s 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 reliefs) 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, the allegation against petitioner is that on 12.05.2025 at 1700 hours, SIP and staff of the police station, acting on secret information, apprehended Sagar s/o Kishan Mal near Alamdar Chowk as he attempted to flee. Upon body search, a black shopper containing 1080 grams of charas was recovered along with Rs.200/-. The accused admitted to selling charas. Due to the unavailability of private mashirs, police officials acted as witnesses. The charas was sealed for chemical analysis, and FIR was lodged under Section 9 (1) (3) (c) of the CNS Amendment Act, 2024.

4. Mr. Mumtaz Ali Panhwar, the learned counsel for the petitioner, argues that there are no sufficient grounds to believe that the petitioner is involved in the alleged offence under Section 9(c) of the Sindh Control of Narcotic Substances Act, 2024. He submits that the FIR was registered with malicious intent at the instigation of a politically powerful individual, in reprisal for the petitioner’s peaceful protest regarding water shortage. He contends that no

narcotics were recovered from the petitioner's exclusive possession and that both the arrest and the recovery were fabricated and took place at the police station. The counsel further argues that the FIR suffers from major legal deficiencies, notably the failure to include any independent witnesses despite the alleged incident occurring in a densely populated locality, thereby violating the intent of Section 103 Cr.P.C. He also points out that the mandatory requirement of video recording under Section 17(2) of the amended Act was ignored. All witnesses cited by the prosecution are police officials, allegedly having a vested interest, and there is a complete lack of independent verification, which significantly weakens the prosecution's case. Moreover, he highlights the petitioner's unblemished record, local residence, and willingness to cooperate with the investigation, stressing that continued detention, in these circumstances, would amount to unjust punishment before conviction. He argues that any harm caused by unwarranted imprisonment would be irreparable if the petitioner is later acquitted. Accordingly, he seeks bail on the grounds of mala fide prosecution, absence of credible evidence, and the need for further inquiry under the law.

5. Mr. Siraj Ahmed Bijarani, the learned Assistant Prosecutor General, strongly opposes the petitioners' request for bail, contending that they were caught red-handed in possession of a commercial quantity of charas, thereby falling directly within the purview of Section 9(c) of the Sindh Control of Narcotic Substances Act, 2024, which squarely attracts the prohibitory clause under Section 497 Cr.P.C. He asserts that the recovery was made based on

credible intelligence and in full adherence to the legal protocol, including the preparation of proper documentation and the prompt forwarding of the seized substance for chemical examination. He further clarifies that the absence of private mashirs does not imply any malice or impropriety, given the general reluctance of the public to become involved in narcotics-related cases. The learned APG maintains that the evidence provided by police officers cannot be discarded simply because they are official witnesses. He categorically rejects the petitioner's allegations of political motivation, terming them baseless and unsupported by any convincing material. Although he acknowledges that video recording as mandated under Section 17(2) of the amended Act is an advisable procedural safeguard, he argues that its absence does not fatally undermine the prosecution's case. Considering the grave nature of the charges, the significant quantity of drugs recovered, and the legal presumption of guilt attached to such offences, the petitioners, in his view, have not established any valid ground to justify further inquiry. Therefore, he contends, they are not deserving 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 1080 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. *prima facie*, it appears that the material on record does not connect petitioner to the commission of offence. Given these deficiencies, and considering that the petitioners have succeeded in raising grounds warranting further inquiry under Section 497(2) Cr.P.C., we are of the view that they merit the concession of bail in the interest of justice, procedural propriety, and to avert any misuse of prosecutorial authority. Accordingly, this petition is accepted. The petitioner, Sagar son of Kishan Mal, 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

JUDGE

****Abdullahchanna/PS****