

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

**C.P No. D-821 of 2025**  
*[Kashif v. The State & others]*

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

|                                               |                                          |
|-----------------------------------------------|------------------------------------------|
| Counsel for Petitioner:                       | Mr. Muhammad Hassan Mashori,<br>Advocate |
| Counsels/ Representatives for<br>Respondents: | Mr Siraj Ali 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 petitioner / accused on bail in connection with FIRNo.87/2025at PS Hussainabad registered CNS Amendment Act 2024.u/s 9 (1) 3 (c).  
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 2024the 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 05.05.2025 at around 0100 hours, SIP and police staff of P.S. Hussainabad, acting on spy information, apprehended Kashif s/o Muhammad Yousuf near Bacha Band, Latifabad, in possession of 2016 grams of charas contained in a black shopper. The accused admitted to selling it for livelihood. Due to unavailability of private mashirs, police officials acted as witnesses. The contraband was seized, sealed, and FIR was registered under Section 9 (1) (3) (c) of the Sindh CNS Act, 2024.

4. Mr. Muhammad Hassan Mashori, the learned counsel for the petitioner, submits that there exists no reasonable basis to believe the petitioner’s involvement in the offence alleged under Section 9 (c) of the Sindh Control of Narcotic Substances Act, 2024. He maintains that the FIR was lodged with ulterior motives, influenced by a politically dominant figure as retaliation for the petitioner’s peaceful protest highlighting water scarcity issues. It is

contended that no contraband was recovered from the petitioner's exclusive possession, and that both the arrest and the recovery were staged at the police station. The learned counsel points out that the FIR is marred by serious procedural flaws, most notably the failure to associate independent witnesses, despite the incident allegedly taking place in a thickly populated area—thus contravening the spirit of Section 103 Cr.P.C. He further notes the prosecution's non-compliance with Section 17 (2) of the amended Act, which mandates video recording of warrantless recoveries and arrests. According to him, all witnesses are police personnel with vested interests, and no independent corroborative evidence has been presented, thereby casting significant doubt on the prosecution's version. He also highlights the petitioner's clean antecedents, permanent residence, and readiness to cooperate with the investigation, arguing that continued incarceration in these circumstances would amount to punishment without trial. He stresses that any unjustified loss of liberty cannot be remedied in the event of an eventual acquittal. Thus, he prays for the grant of bail on the grounds of mala fide intent, absence of trustworthy evidence, and the case being one of further inquiry within the meaning of the law.

5. Mr. Siraj Ahmed Bajarani, the learned Assistant Prosecutor General, firmly opposes the petitioners' application for bail, asserting that they were apprehended in the act, in possession of a commercial quantity of charas, thereby attracting the provisions of Section 9 (c) of the Sindh Control of Narcotic Substances Act, 2024. He submits that the offence clearly falls within the prohibitory

clause of Section 497 Cr.P.C. He maintains that the recovery was made pursuant to reliable intelligence and in full conformity with legal procedures, including proper documentation and timely dispatch of the recovered substance for chemical analysis. The learned APG explains that the non-association of private mashirs does not reflect any impropriety, as it is common for citizens to refrain from participating in narcotics cases due to fear or disinterest. He argues that the credibility of police witnesses cannot be doubted solely on account of their official status. Allegations of political victimisation, he contends, are unfounded and lack any substantive proof. While acknowledging that video recording under Section 17(2) of the amended Act is a recommended safeguard, he asserts that its absence does not vitiate the prosecution's case. Given the seriousness of the offence, the considerable volume of narcotics recovered, and the statutory presumption of guilt, he argues that the petitioners have failed to raise any plausible grounds for further inquiry. Consequently, he concludes that they are not entitled to the concession 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 present matter, the alleged recovery of 2016 grams of charas falls under the ambit of Section 9 (i) 3 (c) of the Control of Narcotic Substances Act, which carries a sentence 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. Significantly, the minimum sentence prescribed—being nine years—does not reach the threshold of the prohibitory clause under Section 497(1) Cr.P.C. which applies only where the

minimum sentence is ten years or more. Therefore, on the face of it, the offence does not invoke the statutory bar to bail. Furthermore, the arrest allegedly occurred during daylight hours, rendering it implausible that no private individuals were present who could have been engaged as mashirs. Although Section 103 Cr.P.C. is excluded in narcotics matters under Section 25 of the CNS Act, the procedural safeguards enshrined in Section 17(2) of the amended Act become all the more significant. This provision mandates video recording or photographic documentation of warrantless recoveries, inspections, and arrests, serving as a crucial measure to validate the legitimacy of such actions. However, the record reflects that the police did not adhere to these mandatory safeguards, thereby calling into serious question the credibility of the prosecution's version. These procedural deficiencies and inconsistencies cast substantial doubt on the reliability of the alleged recovery and arrest, bringing the case squarely within the ambit of further inquiry under Section 497(2) Cr.P.C. It is pertinent to recall the guiding principle laid down by the Honourable Supreme Court in *Muhammad Arshad v. The State* [2022 SCMR 1555], which confirms that even at the bail stage, the benefit of doubt may be extended where circumstances justify such a course.

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, Kashif 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***

***JUDGE***

***\*Abdullahchanna/PS\****