

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

CP. No. D- 367 of 2025
[Qurban Ali v. The State]

BEFORE:

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

Petitioner : Through Mr. Sobdar Khan Khoso who is called absent and
for whom Mr. Satram Das Advocate, holds brief.

Respondent : Through Mr. Ayaz Ali Rajpar, Addl. A.G. &
Mr. Ghulam Abbas Dalwani A.P.G

Date of hearing
& Decision: 09.07.2025

ORDER

ADNAN-UL-KARIM MEMON J:- Petitioner seeks pre-arrest bail in Crime
No.07 of 2025 registered at Police Station Sufi Faqir District Umerkot under
Sections 9(i)(a) / 9(2)(i) of The Sindh Control of Narcotic Substances Act, 2024.

2. The petitioner has been implicated in the above crime. The allegations stem
solely from a co-accused's statement, as the petitioner was not present at the place
of incident and nothing was recovered from his possession but the police are
seeking his arrest with malafide intentions. Given the jurisdictional bar on
Sessions Courts under Section 35 of the Sindh Control of Narcotics Substance
Act, 2024 (as per the Honorable High Court of Sindh at Karachi's order in C.P.
No. D-937 of 2025 on April 22, 2025), the petitioner has no alternative remedy but
to invoke the extraordinary constitutional jurisdiction of this Honorable Court
under Article 199 of the Constitution of Pakistan, 1973.

3. Petitioner's counsel argued that the petitioner is innocent and the case
against him is fabricated as he was not present at the place of incident and he has
been implicated solely on the basis of inadmissible statement of co-accused. There
is no independent evidence to prove the FIR's narrative. It is implausible that
someone would openly carry contraband in public; FIR admits that no public
witnesses (mashirs) were present during the alleged recovery; only police officials
were cited. This directly violates Section 103 Cr.P.C. and Sections 21 and 22 of
the Narcotics Act, casting serious doubt on the prosecution's credibility; that the
FIR was delayed by 45 minutes without plausible explanation, suggesting

collaboration and consultation; The facts indicate a case of further inquiry under Section 497(2) Cr.P.C; that the alleged substance appears to be "foisted" upon the co-accused and on his statement, he has been implicated and the place of incident seems to be "managed," indicating a deliberate attempt to rope the petitioner him with malafide intention; that grant of bail is the rule and refusal is an exception, especially when the offense does not fall under the prohibitory clause. However, the petitioner has apprehension to be arrested and humiliated, if bail is not granted to him.

4. Learned A.P.G has objected to the grant of bail to the petitioner on the ground that the principal accused was arrested at the spot and charas was recovered from his possession; that the petitioner has failed to show any enmity and/or malafide on the part of police. Learned Additional A.G. adopted the arguments of learned A.P.G. 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 and the case law cited at the bar.

6. We have noticed that the case of Ateebur Rehman v. The State (2016 SCMR 1424) which involved recovery of 1014 grams of heroin, and Aya Khan and another v. The State (2020 SCMR 350) which involved recovery of 1100 grams of heroin, and bail was granted by the Supreme Court. In principle, bail does not mean acquittal of the accused but only a change of custody from police to the sureties, who, on furnishing bonds, take responsibility to produce the accused whenever and wherever required to be produced. On the proposition above, we are fortified with the decision of Supreme Court in the case of Haji Muhammad Nazir v. The State (2008 SCMR 807).

7. Keeping in view the meager quantity of narcotics recovered from the co-accused, which carries a sentence of less than five years and the admission that the petitioner has no prior criminal record, this Constitutional Petition for bail has force in terms of Section 498 Cr.P.C; therefore for these reasons we by our short order of even date, confirmed the interim bail granted to the Petitioner in Crime No.07 of 2025 of Police Station Sufi Faqir District Umerkot under Sections 9(i)(a) / 9(2)(i) of The Sindh Control of Narcotic Substances Act, 2024, on the same terms and conditions vide order dated 4.6.2025.

8. The observation recorded hereinabove is tentative and shall not prejudice the case of either party at trial. However, the trial Court shall endeavor to examine the Complainant / his witnesses positively within a reasonable time. If the charge has not been framed, the same shall be framed before the date so fixed by the trial Court, and a compliance report shall be submitted through the Additional Registrar of this Court. The Additional Registrar shall ensure compliance with the order.

J U D G E

J U D G E

Karar_Hussain/PS*