

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

C.P No. D-522 of 2025

[Abdul Khalique Channa v. Province of Sindh and another]

Before:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Riazat Ali Sahar

Counsel for Petitioner: Mr. Muhammad Afzal
Jagirani, Advocate

The State: Through Mr. Ali Anwar
Kandhro, Additional
Prosecutor General, Sindh a/w
Mashooq Ali

Date of Hearing: 10.07.2025

Date of Order 10.07.2025

ORDER

Muhammad Saleem Jessar, J. Through this order, we intend to dispose of captioned petition, wherein the petitioner is seeking his release on bail in Crime No.21/2025, registered against him at PS Faridabad for the offence punishable under section 9 (1) 3(b) of Sindh Control of Narcotic Substances Act, 2024.

2. There exists no express provision regarding the grant of bail under the Sindh Control of Narcotic Substances 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 Narcotic Substances 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. Furthermore, in NAB Ordinance, 1999, the opportunity of bail was not provided by the Statute against the fundamental rights under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 and same was discussed by the Honourable Supreme Court of Pakistan in the case of *Khan Asfandiyar Wali v. Federation of Pakistan* [PLD 2001 SC 607], wherein the Honourable Supreme Court held that the petitions were maintainable under Article 184(3) of the Constitution as they raised issues of public importance relating to the enforcement of fundamental rights. The constitutionality of the NAB Ordinance, 1999 was challenged for violating several constitutional provisions, particularly Articles 4, 9, 10, 12, 18, 23, 24, 25, 175, 202, and 203. The Court found that the Ordinance created a parallel judicial system by assigning judicial powers to the executive, thus infringing upon the principle of separation of powers. Notably, Section 9(b) of the Ordinance, which ousted the jurisdiction of the High Courts to grant bail, was declared **ultra vires** to the Constitution, reaffirming that High Courts retain such jurisdiction under Article 199. The Court directed that Accountability Court Judges must be serving District and Sessions Judges under the supervisory control of the respective High Courts. It also clarified that the offence of "willful default" under Section 5(r) was a continuing one and not retrospective, hence not violative of Article 12. While some provisions were struck down, the Supreme Court applied the doctrine of severability and recommended necessary amendments rather than invalidating the entire Ordinance. Additionally, various directions were issued to ensure judicial independence, due process, and accountability reforms. The affirmation of **High Courts' powers under Article 199**, including the authority **to grant bail**, is explicitly stated in paragraph

(r), where the Court held that **“Section 9(b) of the Ordinance to that extent is ultra vires the Constitution... The superior Courts under Article 199 of the Constitution remain available to their full extent...”**

4. The allegation against the petitioner is that on 10.05.2025, complainant, ASI Hot Khan Janweri of PS Faridabad, along with subordinate staff, proceeded on patrol in government vehicle SPF-896, as per roznamcha entry No. 15. While patrolling near Shah Godrio Link road adjacent to the white house area, they intercepted a suspicious individual. He was apprehended, who identified himself as Abdul Khalique son of Muhammad Ibrahim Channa. Upon search, a black plastic bag was recovered from the accused, containing four pieces of charas of different sizes weighing 520 grams and two currency notes of Rs.100 each. Due to the absence of public mashirs, PC Muhammad Ameen and PC Ali Hassan acted as official mashirs. The contraband and cash were seized, documented in the mashirnama and sent for chemical analysis. The accused was brought to the police station, where FIR was registered under Section 9 (1) (3)(b) of the Sindh Control of Narcotic Substances Act, 2024.

5. Mr. Muhammad Afzal Jagirani, learned counsel for petitioner argued there are no reasonable grounds to believe that the petitioner has committed alleged offence under Section 9 (1) 3(b) of Sindh Control of Narcotic Substances Act, 2024. Learned counsel for the petitioner contends that the FIR has been lodged maliciously due to enmity with the police and the story narrated therein is stereotype, superficial, flawed and clumsily constructed, lacking coherence and not appealing to the ordinary sense of logic or common prudence. The counsel claims no narcotics was recovered from the exclusive possession of the petitioner, the alleged arrest and recovery was staged at the police station and the FIR suffers from legal defects. Learned counsel highlights petitioner clean antecedents, local residence, and willingness to cooperate, contending that bail should not be withheld as a form of punishment, especially since wrongful incarceration is irreparable if he is later acquitted. Hence, he seeks bail on the ground of further inquiry, malafide, and lack of credible evidence.

6. Mr. Ali Anwar Kandhro, learned Additional Prosecutor General, Sindh opposes the bail, arguing that the Petitioner was caught red-handed with “charas” under Section 9 (1) 3(b) of The Sindh Control of Narcotic Substances Act, 2024”. The recovery was lawfully made, with all legal formalities duly observed, including proper documentation and dispatch for chemical analysis. The absence of private mashirs is explained by public reluctance in narcotics cases and the testimony of police officials cannot be discarded solely on that basis. Given the gravity of the offence, 520 grams of charas was recovered from the petitioner and the statutory presumption of guilt, the Petitioner has failed to establish grounds for further inquiry, and therefore, is not entitled to the concession of bail.

7. Heard. Record Perused.

8. It becomes pertinent to observe that **Section 35** of the Act comprises two distinct limbs. The first limb, which pertains to the exclusion of the grant of bail, in our considered view, appears to have been enacted with intent of addressing alarming rise in drug-related offences within society. This legislative restriction seems designed as a deterrent, aimed at combating growing menace of drug trafficking and curbing spread of narcotic substances. The urgency and gravity of the drug crisis that necessitates such stringent measures. The second limb, encapsulated in sub-section (2) of Section 35, stipulates that ***"the trial court shall conclude the trial within a period of six months."*** This provision reflects the legislature’s intent to ensure that the Special Courts (yet to be established by the Provincial Government) proceed expeditiously with adjudication of narcotics cases.¹The object is to safeguard the rights of the accused, particularly those who may have been falsely or maliciously implicated, by preventing prolonged incarceration without trial. Thus, while the first limb addresses

¹ The urgent need of such special court was also emphasized by Muhammad Karim Khan Agha, J in Syed Sahir Hassan v. P.O Sindh & others [CP No. D-937 of 2025] as :

"Accordingly a copy of this order shall be sent to the Chief Secretary and Secretary Law, government of Sindh, who shall ensure that special Courts under the aforesaid Act are established immediately and the Judges for such Courts shall be appointed in accordance with law expeditiously so that these cases can be tried and the petitioner and other may not left languishing in jail without any resource"

deterrence and public safety, the second seeks to balance these aims with procedural fairness and timely access to justice.

9. It also becomes overarchingly significant to elaborate upon the scope and legislative intent of Section 17 of the Act. This provision predominantly addresses situations where no prior arrest or search warrant has been obtained, yet the Police/Narcotic Force has credible information suggesting presence or existence of prohibited substances “*concealed in any building, place, premises or conveyance.*” In such circumstances, the law recognises urgency and permits immediate action; however, to prevent abuse of this discretion, Section 17(2) mandates that “***video recording of all raids, seizures, inspections and arrests shall be made by the officer in charge of such operation.***” A narrow or isolated reading of Section 17(2) would undermine the safeguards envisioned by the legislature within the broader framework of Section 17 of the Act. The true purpose behind such mandatory video recording, particularly in warrantless situations, is not only to validate the claimed recovery of narcotic substances but also to ensure transparency, accountability and credibility in the actions of the law enforcement agencies. It serves as a check on the arbitrary exercise of power and provides evidentiary assurance that the recovery was made from the accused, and not planted subsequently. In our respectful view, Section 17 (2) of the Act ought to be interpreted purposively and in consonance with growing jurisprudential need to balance public interest with individual rights. Given the surge in both drug abuse and alleged misuse of authority by enforcement personnel, this statutory requirement assumes critical importance. Video footage or photographic evidence should ideally capture the accused, the recovered substance, precise location of recovery and the presence of responsible officers at the time of preparation of “*Mashirnama*” (*Inspection memo of recovery and arrest*). This procedural safeguard becomes an indispensable tool in separating genuine prosecutions from those tainted with *mala fides*. The above proposition finds authoritative backing in the observation of the Honourable Supreme Court in the case of **Zahid Sarfraz Gill**, where the Court emphasised the evidentiary value and procedural sanctity of visual documentation during recovery.

This principle was subsequently reaffirmed in the case of **Muhammad Abid Hussain**, wherein the Court once again underscored the indispensable role of video recording in ensuring fair investigation and protecting the rights of the accused. Hence, Section 17(2) should not be viewed as a mere procedural formality but as a vital element of lawful prosecution under the Control of Narcotic Substances regime—anchored in fairness, due process and judicial oversight. More so, Sections 16, 17 and 18 under Chapter-III of the Act are interconnected with each other. It is also pertinent to mention here that as Section 17 (1) of the Act, provides powers of entry, search, seizure and arrest without warrant, *whether in some premises or in public place*, are vested to an officer not below the rank of Inspector of Narcotic Control or equivalent authorized by Director General Narcotics Control Sindh. For sake of convenience, we want to reproduce the sections 16, 17 and 18 under Chapter-III of the Act, which reads as under:-

CHAPTER – III

SEARCH AND INVESTIGATION

17. Power of entry, search, seizure and arrest without warrant. – (1) Where an officer, not below the rank of Inspector Narcotics Control or equivalent authorized in this behalf by Director General Narcotics Control Sindh, who from his personal knowledge or from information given to him by any person is of opinion that any narcotic drug, psychotropic substance, precursor chemicals or controlled substance and methamphetamine in respect of which an offence punishable under this Act has been committed is kept or concealed in any building, place, premises or conveyance, and a warrant for arrest or search cannot be obtained against such person without affording him an opportunity for the concealment of evidence of facility for his escape, such officer may-

- (a) Enter into any such building, place, premises or conveyance;
- (b) Break open any door and remove any other obstacle to such entry in case of resistance;
- (c) Seize such narcotics drugs, psychotropic substances, precursor chemical, controlled substances and other materials used in the manufacture thereof and any other article which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act; and
- (d) Detain, search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed an offence punishable under this Act.

(2) The video recording of all raids, seizures, inspections and arrests shall be made by the officer in-charge of such operations.

(3) Before or immediately after taking any action under sub-section (1), the officer referred to in that sub-section shall record the grounds and basis of his information and proposed action and forthwith send a copy thereof to his immediate superior officer.

(4) All the offences under this Act shall be cognizable and non-bail-able.

18. Power to seizure and arrest in public place. - An officer authorized under section 17 may -

- (a) Seize, in any place or in transit, any narcotic drug, psychotropic substance, precursor chemical or controlled substance in respect of which he has reason to believe that an offence punishable under this Act has been committed, and, along-with such drug, substance or any other article liable to confiscation under this Act, and any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act; and
- (b) Detain and search any person whom he has reasons to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug, psychotropic substance, precursor chemical or controlled substance in his possession and such possession appears to him to be unlawful, arrest him.

10. The principle emerging that grant of bail is not to be mechanically denied solely on the basis of the quantity of the recovered substance but must instead be assessed in light of the overall facts and circumstances of the case, including the nature of evidence, procedural compliance, and legal principles governing the bail.

11. If the prosecution successfully demonstrates, even at the bail stage, a credible and convincing account of recovery from the possession of the accused, the burden then shifts to the accused to dislodge such presumption through tangible and cogent material, even for the limited purpose of seeking concession of bail. This rebuttal, however, need not be conclusive at this stage but must raise substantial doubts in prosecution's version sufficient to bring the case within ambit of further inquiry. It is a settled principle that at the bail stage, the Court is not required to conduct a mini-trial, but a tentative assessment of the available material is necessary to weigh the plausibility of the

respective claims. Thus, both the prosecution and the defence bear the obligation to assist the Court in establishing or controverting alleged recovery, in order to secure the relief sought for or to justify its denial. Accordingly, the substance allegedly recovered in present case falls squarely within the statutory definition of a narcotic drug under the Act. The alleged **recovery of 520 grams of charas** directly attracts the provisions of Section 9 (1) (3)(b) of the Act, which prescribes a sentence of imprisonment that **may extend to nine years but shall not be less than five years, along with a fine which may be up to one hundred thousand rupees**. It is pertinent to underscore that the minimum punishment provided—being five years—falls below the threshold of the prohibitory clause as envisaged under Section 497(1) Cr.P.C, which mandates a minimum sentence of ten years or more. Consequently, the offence, on the face of it, does not fall within the prohibitory clause and the case calls for further inquiry, making the applicant entitled to consideration for bail. *Prima facie*, it appears that the material on record does not connect the petitioner to the commission of the offence in the manner alleged by the prosecution.

12. Furthermore, the alleged arrest took place during daylight hours. It is therefore implausible that no private individuals were present who could have been associated as mashirs to witness the alleged recovery proceedings. In instant case, alleged recovery was effected by an Assistant Sub-Inspector of Police, who also proceeded to lodge the FIR. However, Section 2(e) read with Section 17(1) of the Sindh Control of Narcotic Substances Act, 2024, confers the authority to carry out search, seizure and arrest without warrant exclusively upon an officer not below the rank of Inspector Narcotics Control or an equivalent officer duly authorized by the Director General Narcotics Control Sindh. Moreover, application of Section 17(2) assumes paramount importance, as it mandates video recording and/or photographic documentation of all raids, seizures, inspections and arrests carried out under this provision. These procedural safeguards are not merely directory but are intended to ensure transparency, accountability and legality in actions taken under the Act. Such glaring procedural lapses cast serious doubt on the legality of the recovery and

materially weaken the prosecution's version at this stage. In view of these lapses and contradictions, the case clearly falls within the ambit of *further inquiry* as contemplated under Section 497 (2) Cr.P.C..

13. *Prima facie*, it appears that the material on record does not connect petitioner to the commission of offence. In the interest of justice, procedural fairness and to prevent potential abuse of prosecutorial powers, we are of the considered view that the petitioner is entitled to the concession of bail. Accordingly, the petition is ***allowed***. The petitioner, Abdul Khalique son of Muhammad Ibrahim Channa is admitted to post arrest bail subject to furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand only) and a personal bond in the like amount to the satisfaction of the learned trial Court.

14. Needless to say, any observation made hereinabove is tentative in nature and shall not influence the outcome of the trial.

JUDGE

JUDGE

Manzoor