

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
C.P.No.D-625 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1. For orders on office objections at flag "A".
- 2. For hearing of main case.

10.07.2025

Mr. Abdul Rehman A. Bhutto, Advocate for the Petitioner.

Mr. Liaquat Ali Shar, Additional Advocate General, Sindh.

Mr. Ali Anwar Kandhro, Additional Prosecutor General, Sindh
a/w SIP Raza Muhammad, S.H.O./I.O. P.S. Kareem Bux and
and ASI Ghulam Sarwar Buriro

Learned counsel submits that the petitioner was taken into custody by the police of Police Station Kareem Bux, District Jacobabad, on 24-05-2025. Consequently, the petitioner’s mother, Mst. Sabo Lashari, instituted Habeas Corpus Petition No. 78 of 2025 on 29-05-2025 before the learned Sessions Judge, Jacobabad, who thereafter assigned the matter to the learned Additional Sessions Judge, Thull, for appropriate proceedings.

Pursuant to the filing of the petition, notice was issued to the police authorities, and the learned Civil Judge and Judicial Magistrate, Thull, was appointed as Raid Commissioner with directions to conduct an unannounced raid at the relevant police lock-up. In compliance, the Raid Commissioner carried out surprise inspections at the Police Post Chook Lashari and Police Station A/C Sections, Thull. As per the Magistrate’s report dated 29-05-2025, the detainee was not found present at either location. The concerned Station House Officer (S.H.O) also submitted a report confirming the same. Thereafter, the learned Additional Sessions Judge, Thull, passed an order dated 30-05-2025, the operative part of which reads as follows:

“2. Accordingly, directions were issued by the Honorable Sessions Judge, Jacobabad to learned Civil Judge & J.M Thul, to conduct a surprise raid at police lockup and surrounding rooms within premises of PP Chook Lashari and PS A/C Section Thul to recover alleged detainee .Consequently, he visited PP Chook Lashari & PS A/C Section Thul, and as per his report dated 29.05.2025, he searched the lockup and premises of the PP Chook Lashari & police station, but the above named detainee was not

found detained there. Moreover, the SHO has also submitted the same report. Under such circumstances, the present petition stands disposed of having become infructuous”

In the interim, an FIR was registered against the detainee under Crime No. 11 of 2025, invoking Sections 9(i) and 3(c) of the Sindh Control of Narcotic Substances Act, 2024, at Police Station Kareem Bux. Meanwhile, the detainee's mother approached the S.S.P. Jacobabad and once again filed Habeas Corpus Petition No. 84 of 2025 before the learned Sessions Judge, Jacobabad, on 05-06-2025. Pursuant to this second application, the learned Civil Judge and Judicial Magistrate, who had been previously appointed, was once again directed to conduct a surprise inspection and submit a report.

Upon conducting the raid, the Magistrate reported that the detainee was found in possession of 1,950 grams of charas and, consequently, was formally booked under Crime No. 11 of 2025 under Sections 9(i) and 3(c) of the Sindh Control of Narcotic Substances Act, 2024, at Police Station Kareem Bux. The S.H.O./Investigating Officer of Police Station Kareem Bux appeared and submitted that the accused was produced before the Court of concerned Magistrate on 31-05-2025 to seek his police custody or physical remand. However, the learned Judicial Magistrate, declined to entertain the remand application. Meanwhile, the learned District and Sessions Judge, Jacobabad also agreed with the learned Magistrate on the ground that the Provincial Government of Sindh had not yet notified the designated Tribunals for the trial of certain narcotics offences, as required under the Sindh Control of Narcotic Substances Act, 2024 (Sindh Act No. VIII of 2024). Accordingly, the Sessions Judge refused to assume jurisdiction over the matter or pass any appropriate order.

Subsequently, the Raid Commissioner submitted his report before the learned Sessions Judge, Jacobabad, who disposed of the Habeas Corpus Peition no. 84 of 2025 application vide order dated 10-06-2025 in the following terms:

“ ORDER
10.06.2025

The H.C.P under section 491 Cr. P.C ws filed by petitioner named above alleging therein that her son Hafeezullah, has been wrongfully detained by S.H.O P.S. Kareem Bux. On her application raid was ordered to be conducted through learned Civil Judge and Judicial Magistrate-II, Jacobabad, who after conducting raid has furnished his report and on call SHO/Inspector Raza Muhammad has put appearance with report.

Heard arguments and perused the raid report furnished by learned Magistrate, which reflects that person in question/alleged detainee is arrested in case of recovery of 1950 grams charas, bearing Crime No.11/2025 of same P.S under memo dated 30.05.2025, even his arrest was shown in roznamcha and SHO pointed out that Special Courts of Province are recently refrained by Honourable High Court from entertaining the cases of CNS, therefore, his remand application u/s 167 Cr.P.C. was not entertained by concerned Magistrate and was verbally turned down, hence he kept detainee/accused on (Rahdari), however, very purpose of this application has been served, hence stands disposed of, the SHI/O is directed to deal with the matter in accordance to law.”

Learned counsel contends that although the police produced the petitioner before the learned Magistrate as well as the Court of Sessions, Jacobabad, neither forum addressed the petitioner’s grievance or examined the legality of his detention, thereby acting in excess of their judicial mandate and effectively depriving the petitioner of his fundamental right to liberty. Counsel further submits that while the petitioner has ostensibly been shown as implicated in the aforementioned crime, no lawful or judicially sanctioned order has been passed to regularise or justify his continued detention. Consequently, the learned courts below erred in declining to entertain the application submitted by the Investigating Officer, leaving the petitioner without legal recourse. In these circumstances, it is prayed that appropriate directions be issued for the petitioner’s release, either on personal recognisance (P.R.) bond or upon furnishing surety, as deemed just and proper by this Honourable Court.

The learned Magistrate was under a legal obligation to either discharge the accused, Hafeezullah, on personal recognisance (P.R.) bond under Section 63 of the Criminal Procedure Code or to pass an appropriate and reasoned order in accordance with law; regrettably, no such course was adopted. Furthermore, the learned Sessions Judge, as the supervisory authority over the district judiciary and vested with suo motu revisional jurisdiction under Section 435 Cr.P.C., was duty-bound to exercise such jurisdiction to rectify the irregularities committed by the Magistrate. Instead, the learned Sessions Judge failed to discharge this responsibility and, rather concerningly, endorsed and thereby perpetuated the unlawful actions of the Magistrate, which amounts to a dereliction of judicial duty and a serious miscarriage of justice.

For ease of reference, the relevant provisions of the Criminal Procedure Code (Cr.P.C.) are reproduced hereunder:

61. Person arrested not to be detained more than twenty-four hours. *No police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.*

63. Discharge of person apprehended. *No person who has been arrested by a police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.*

As regards the view adopted by the learned Sessions Judge, Jacobabad (Syed Sharafuddin Shah), that the Provincial Government has yet to notify the Tribunals or Courts designated for the trial of narcotic cases and, on that basis, his refusal to grant police remand; such a position is wholly misconceived and stands in clear violation of the express provisions of Chapter I, Section 2, sub-sections (pp) and (qq) of the Sindh Control of Narcotic Substances Act, 2024, the relevant portions of which are reproduced hereunder for ready reference:

“(pp) “Special Court” means the Special Court established under section 30 or any other Court empowered to exercise the powers of the Special Court under this Act;

(qq) “Competent Court” means existing Court of District & Sessions Judge that has the legal authority to hear and decide a case under this Act;”

In terms of the aforesaid statutory provisions, unless and until the Provincial Government formally designates or notifies a specific Court or Tribunal, the Courts established under Section 30 Cr.P.C., or any other Court empowered to exercise the powers of a Special Court under the Sindh Control of Narcotic Substances Act, 2024 — including the Courts of the Sessions Judge — are legally authorised and competent to hear and adjudicate matters falling within the ambit of the said Act.

Regrettably, both the learned Sessions Judge and the learned Judicial Magistrate failed to acquaint themselves with the applicable statutory framework and proceeded to pass orders in a cursory and arbitrary manner, without undertaking even the most basic reading of the law. Such conduct reflects not only a disregard for judicial diligence but also a concerning level of ignorance of the statutory provisions governing the matter at hand.

In view of the foregoing, report be called from the learned Sessions Judge, Jacobabad, as well as the concerned Magistrate, through fax or any other appropriate mode, to ascertain the factual and legal basis on which the impugned orders were passed with regard to unlawful detention of accused Hafeezullah Lashari.

Accordingly, we are of the considered view that the liberty of an individual is of paramount importance and must not be curtailed save in accordance with the law. In light thereof, the Investigating Officer of the case is hereby directed to ensure the production of the petitioner/accused before this Court on the next date, i.e., 11-07-2025 at 09:00 a.m., along with the complete police record and all relevant case papers.

A copy of this order shall be sent through fax today to Sessions Judge, Jacobabad, as well as S.S.P. Jacobabad for compliance.

Judge

Judge