

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Const. Petition No.D- 792 of 2025

Date of hearing	Order with signature of Judge
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Before:
Mr. Justice Muhammad Saleem Jessar
Mr. Justice Riazat Ali Sahar

Petitioner : **Aqeel Bilal s/o Ghulam Qadir Bhatti** through
Mr. Shafique Ahmed Leghari, Advocate.

The Respondents: Through M/s Syed Naveed Ahmed Shah, Deputy
Attorney General and Ghulam Abbas Akhtar,
SSP, Pakistan Railways along with SI/ASHO
RPS, Rohri.

Date of Hearing : **09-07-2025**
Date of Decision : **09-07-2025**

O R D E R

RIAZAT ALI SAHAR, J. By way of this petition, petitioner Aqeel Bilal son of Ghulam Qadir by caste Bhatti, seeks his release on post arrest bail in crime No.53 of 2024 under section 9 (1), 3(c) of 9(1) 1 (Amendment) Act, 2022, registered at Railway Police Station Rohri.

2. Since facts of the prosecution case are already mentioned in the FIR as well as in the memo of petition; therefore, there is no need to reproduce the same. Reliance is placed on the case of **Muhammad Shakeel v. The State & others** (PLD 2014 SC 458).

3. At the very outset, learned DAG and SPP Pakistan Railways opposed the petition on the ground that the petitioner has been booked under the provisions of the CNS (Amendment) Act, 2022, and the petition in hand is not maintainable in view of the new enactment made by the Provincial Government in the year 2024, as the offence was registered/reported under the enactment of 2022. They further submitted that the Provincial Government cannot repeal an enactment promulgated by the Federal Government and contended that the petitioner may be advised to approach the proper forum by filing an appropriate application.

4. When confronted, learned counsel for the petitioner referred to Sections 43 and 45 of the Sindh Control of Narcotic Substances Act, 2024 (Sindh Act VIII of 2024), which reflect that the Provincial Government has repealed applicability of the Control of Narcotic Substances Act, 1997, to the extent of Province of Sindh, and the said Act has overriding effect over other laws. He further submitted that the vires of said Act have not been challenged before any competent forum; hence, the objection raised by law officers is without force. Consequently, the petition in hand is maintainable.

5. We have heard learned counsel for the petitioner as well as law officers and have gone through the material made available before us on record

6. There exists no express provision regarding the grant of bail under 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 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.

7. 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 Asfandyar Wali v. Federation of Pakistan** (PLD 2001 SC 607), 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...**"

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 the intent of addressing the alarming rise in drug related offences within society. This legislative restriction seems designed as a deterrent, aimed at combating the growing menace of drug trafficking and curbing the spread of narcotic substances. Recent high-profile arrests—such as that of a young individual named Armaghan, which has garnered extensive media coverage— underscore the urgency and gravity of the drug crisis that necessitates such stringent measures. The second limb,

encapsulated in subsection (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 the adjudication of narcotics cases. The 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 deterrence and public safety, the second seeks to balance these aims with procedural fairness and timely access to justice.

9. The record reflects that the alleged recovery from the petitioner amounted to 1250 grams of Charas. The prescribed punishment for such a quantity is the imprisonment which may extend to seven years but shall not be less than three years and therefore the offence does not attract the prohibitory clause of Section 497(1) Cr.P.C, thus making bail the rule and jail the exception. The surrounding circumstances raise serious doubts, the absence of private witnesses, contradictions in the prosecution version, and lack of corroborative evidence render the case fit for further inquiry under Section 497(2) Cr.P.C.

10. Moreover, the non-association of private mashirs in such circumstances undermines the credibility of the prosecution case. Additionally, no video recording or photographic evidence of the recovery proceedings has been placed on record, despite the availability of technology and the statutory expectation of transparency under such circumstances. Reliance is placed on the cases of **Muhammad Abid Hussain v. The State (2025 SCMR 721)** and **Zahid Sarfaraz Gill v. The State (2024 SCMR 934)**. It is a well-entrenched principle that in cases hinging solely on police testimony, the benefit of doubt must be afforded to the accused, even at the bail stage. Reliance is placed on the case of **Muhammad Arshad v. The State (2022 SCMR 1555)**.

11. In view of the foregoing analysis, it is manifest that the prosecution has failed to produce video or photographic evidence as

mandated under Section 17(2) of the Act, which casts serious doubt upon the legality of the recovery and arrest. The absence of private mashirs, despite the alleged incident occurring in a public and accessible area and the lack of independent corroboration, further undermine the credibility of the prosecution's case. *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 was **allowed** through our short order dated 09.07.2025, whereby petitioner **Aqeel Bilal** was ordered to be released on bail upon furnishing solvent surety in the sum of **Rs.50,000/- (Fifty Thousand)** and a P.R bond in the like amount to the satisfaction of the 1st Additional Sessions Judge/Special Judge (CNS) MCTC-1, Sukkur. These are the reasons for our above said short order.

12. Needless to mention here that the observations recorded hereinabove are tentative in nature and shall not, in any manner, prejudice or influence the trial Court during the adjudication of the case

JUDGE

JUDGE

Ahmad/P.S