

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Const. Petition No.D- 825 of 2025
(Kaleemullah v. P.O. Sindh & another)

Date of hearing	Order with signature of Judge
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Before:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Riazat Ali Sahar

Petitioner : **Kaleemullah** son of Gul Hassan bycaste Chachar through Mr. J.K, Jarwar Advocate.

The Respondents: **The State and Province of Sindh** through M/s Syed Sardar Ali Shah, Additional P.G and Zulifqar Ali Naich, Assistant Advocate General Sindh.

Date of Hearing : **01-07-2025**

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O R D E R

MUHAMMAD SALEEM JESSAR, J. By way of this petition, petitioner Kaleemullah son of Gul Hassan bycaste Chachar seeks his release on post arrest bail in crime No.29 of 2025 under section 9 (b) CNSA 1997 registered at Police Station Dadloi, District Sukkur. After completion of investigation, report under section 173 Cr.P.C (Challan) has been submitted before the Court having jurisdiction.

2. Since facts of the prosecution case are already mentioned in the FIR, which is annexed with Court file, therefore, there is no need to reproduce the same.

3. Learned counsel for the petitioner submitted that petitioner along with one Rano was taken away by police of Police Station 'A' Section Sukkur on 14.05.2025, therefore, mother of petitioner namely Mst. Hooran filed Cr. Misc. Application No. 1518 of 2024 under section 491 Cr.P.C before the Court of learned Sessions Judge, Sukkur who subsequently assigned it to learned 1st Additional Sessions Judge, Sukkur. In consequence to the effect of said application, SHO Police Station Dadloi appeared and filed copy of FIR of instant case being crime No.29 of 2025 of Police Station Dadloi, District Sukkur. Hence the criminal Misc. Application was disposed of. He next submits that the police after keeping the petitioner under wrongful

confinement for about five days, cooked up instant case only to save their skin from severe punishment of law, therefore, alleged charas was not recovered but has been foisted upon the petitioner only to exert illegal pressure upon the petitioner so that he may meet with unjustified demands of police. Since nothing has been recovered from his possession, but the police in order to take shield from the superiors, have foisted charas upon petitioner. Hence, he prayed for release of petitioner on bail as his case requires further enquiry.

4. Learned Additional P.G appearing for state files CRO of petitioner and submits that no identical or any criminal case has been registered against the petitioner, therefore, does not oppose the petition in terms of its prayer.

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. It remains undisputed that the Act of 2024, has come into force within the territorial jurisdiction of Sindh, thereby repealing the applicability of the Federal Control of Narcotic Substances Act, 1997. Section 35(1) of the Act of 2024, unequivocally bars the application of Sections 496 and 497 Cr.P.C, thereby ousting the jurisdiction of subordinate courts from entertaining bail applications in cases pertaining to narcotic offences. However, in view of the fundamental rights enshrined under Articles 9, 10-A, and 14 of the Constitution, this Court retains jurisdiction under Article 199(1)(c) to entertain post-arrest bail petitions, notwithstanding the ouster clause encapsulated in Section 35(1) of the Act of 2024. Reliance is placed on the seminal judgment of the Supreme Court in a case of **Khan Asfandiyar Wali v. Federation of Pakistan** (PLD 2001 SC 607), wherein it was authoritatively held that statutory ouster clauses cannot supersede constitutional jurisdiction when fundamental rights are in question.

7. Recently, in the case of **Muhammad Abid Hussain v. The State** (2025 SCMR 721), the Supreme Court of Pakistan has once again underscored the imperative of procedural fairness and the utilization of modern investigative techniques. It has been categorically held that the absence of video evidence and the non-association of independent witnesses in the recovery process casts serious doubt upon the prosecution's case. Furthermore, the Apex Court has reaffirmed that protection against arbitrary and unjust incarceration constitutes a

fundamental constitutional safeguard, emphasizing that interim relief in the form of bail cannot be withheld solely on the ground that the offence entails severe punishment.

8. Admittedly the petitioner as well as Rano who were taken away by police much prior to registration of instant case and to such effect mother of present petitioner filed Criminal Misc. Application U/S 491 Cr.P.C before the Court of Sessions Judge Sukkur for their release. Consequent upon notice of said application the FIR of instant case was submitted showing the petitioner to be in custody. The recovery though have been shown effected from his possession yet no video was recorded by the police whether the same was recovered from petitioner or otherwise. Since the petitioner has brought on record documentary evidence which nullifies the prosecution version besides the prosecution has failed to justify missing of the petitioner/keeping him under wrongful confinement right from 14.05.2025 to 19.05.2025.

9. No doubt the petitioners have been nominated in the FIR and alleged contraband shown to have been recovered from their possession; however per defence plea that they were taken away by the police much prior to registration of the instant case/incident and lateron they were surfaced before the Court below on a notice in terms of application u/s 491 Cr.P.C filed by husband of one of the petitioners. Since the prosecution has not justified missing of the petitioners from 25-05-2025 to 03-05-2025, nor rebutted documentary evidence adduced by the police, hence the malice on the part of the police stand established. It is yet to be proved by the prosecution whether the petitioners were found in possession of alleged contraband and then the trial Court has to determine such accusation against them. It is well settled principle of law that every accused would be presumed to be blue eyed boy of law until and unless he/she may be found guilty of alleged charge and law cannot be stretched upon in favour of the prosecution particularly at bail stage.

10. In the circumstances and in view of above factual position of record the petitioner has successfully made out a good prima facie case for his release on bail. The case of petitioner is purely covered by sub-section 2 to Section 497 Cr.P.C. Consequently instant Const. Petition is hereby **allowed**. The petitioner **Kaleemullah son of Gul Hassan bycaste Chachar** shall be released on bail subject to his furnishing solvent surety in the sum of **Rs.50,000/- (Fifty Thousand)** and P.R bond in the like amount to the satisfaction of Additional Registrar of this Court.

11. 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

Irfan/PS