

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Const. Petition No.D-928 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 : **Syed Faisal Shah** through Mr. Ajeebullah Junejo, Advocate.

The Respondent: **The State** through Syed Sardar Ali Shah, Additional Prosecutor General.

Date of Hearing : **16-07-2025**
Date of Decision : **16-07-2025**

O R D E R

RIAZAT ALI SAHAR, J. By way of this petition, petitioner Syed Faisal Shah son of Syed Abdul Qadeer Shah seeks post-arrest bail in Crime No.132 of 2025, registered at Police Station ‘A’ Section, District Ghotki for offence punishable under Section 9(1), Sr. No.3(a) of the Sindh Control of Narcotic Substances Act, 2024, for allegedly possessing 490 grams of Charas.

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. Learned counsel for the petitioner argued that the petitioner is innocent and has falsely been implicated in this case by the police and recovery of contraband material has been foisted upon him. He further submitted that recovery so affected from the petitioner i.e. 490 grams of charas is the meager quantity besides the punishment for offence as provided under the Act is “may extend to five years and not less than ten months,” hence, submits when the statue provides two punishments, then lesser one may be considered at bail stage. He further argued that by virtue of Section 17(2) of the Act (as amended), the complainant party was under obligation to record video of recovery proceedings but he failed to do so; even by virtue of Section 17 of the Act, the Head

Constable, in this case, was not competent to seize the narcotics or make arrest of the accused without warrant or investigate the case. He, therefore, submits that case against the petitioner requires further enquiry; hence, by granting this petition, the petitioner may be directed to be released on bail.

4. Learned APG after going through Section 17 of the Act and its provisions, submits that petitioner is not previously convict even no CRO has been made available to show any similar case pending against him; therefore, he has no objection for grant of bail.

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. In view of the express bar contained in Section 35(1) of the Sindh Control of Narcotics Substances Act, 2024, the petitioner is left without any efficacious remedy before the ordinary criminal forums. Where a statutory prohibition effectively forecloses access to bail, the constitutional jurisdiction of this Court under Article 199 may be invoked to safeguard the petitioner's fundamental right to liberty, as enshrined in Articles 9 and 14 of the Constitution. For the sake of convenience section 35(1) of the Act, 2024 is reproduced as under:-

“Notwithstanding anything contained in section 496 and 497 of the Code, the bail shall not be granted to an accused person charged with an offence under this Act”.

Therefore, in view of the exceptional nature of the statutory restriction and the absence of any effective legal remedy, this petition is held to be maintainable. Reliance is placed on the judgment of the Honourable Supreme Court in case of ***Khan Asfandiyar Wali v. Federation of Pakistan (PLD 2001 SC 607)***.

7. Allegedly, the petitioner has been nominated in the FIR, and recovery of 490 grams of contraband substance, viz. Charas, is shown to have been effected from his possession by a Head Constable, who under the Act, was not competent to seize the narcotics or make arrest of the accused without warrant or investigate the case. However, the punishment provided by law for the said offence is the imprisonment

which may extend five years but it shall not be less than ten months and it is settled that when the statute provides two punishments, then lesser one is to be considered at bail stage. Hence, the alleged offence with which the petitioner is charged does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C, thus making bail the rule and jail the exception.

8. Furthermore, 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).

9. In the circumstances and in view of above legal as well as factual position of record the petitioner has succeeded to make out a good *prima facie* case for grant of bail. The case of petitioner is purely covered by Section 497(2) Cr.P.C. Accordingly, instant Petition was **allowed** by our short order dated 16.07.2025, whereby the petitioner **Syed Faisal Shah** was ordered to 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 the trial Court / Judicial Magistrate-II, Ghotki. These are the reasons in support of our above short order.

10. 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