

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

C.P No. D-725 of 2025
[Peer Bux v. The State]

Before:
Mr. Justice Arbab Ali Hakro
Mr. Justice Riazat Ali Sahar

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| Counsel for Petitioner: | Mr. Hyder Ali Unar, Advocate |
| Counsel/Representative for Respondents: | Mr. Siraj Ahmed Bijarani, A.P.G. Sindh. |
| Date of Hearing | 27.05.2025 |
| Date of Order | 27.05.2025 |

ORDER

RIAZAT ALI SAHAR, J. Through this order, we intend to dispose of captioned petition, wherein the petitioner is seeking his release on bail in crime No.199/2025 registered against him at PS Kotri for the offence punishable under section 9 (2) 3 of Sindh Control of Narcotics Act 2024.

2. There exists no express provision regarding the grant of bail under the Sindh Control of Narcotics 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 Narcotics 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 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..."**

4. The allegation against the petitioner is that on 03.05.2025, the complainant, ASI at PS Kotri, along with subordinate staff, proceeded on patrol in government vehicle SPE-845, as per roznamcha entry No. 16. While patrolling Liaquat Road, Mariyam Garden and the protective bank, they reached near Burfat Muhallah at about 1730 hours and observed a suspicious individual coming from Burfat Muhallah. He was apprehended, who identified himself as Peer Bux s/o Khamiso, caste Shoro. Upon personal search, a white shopper was recovered from the right pocket of his shirt, containing 65 grams of "Ice" and four currency notes of Rs.100 each. Due to the absence of public mashirs, PC Wasim Ahmed Abro and PC Aftab Ahmed Sohag 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 (2) (3) of the Sindh Control of Narcotic Substances Act, 2024.

5. Mr. Hyder Ali Unar, learned counsel for petitioner argued there are no reasonable grounds to believe that the petitioner has committed the alleged offence under Section 9 (2) 3 of Sindh Control of Narcotics Act, 2024. Learned counsel for the applicant contends that the FIR has been lodged maliciously due to enmity with the police and the story narrated therein is stereotypical, 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—particularly the absence of independent mashirs in a densely populated area, in violation of Section 103 Cr.P.C. Furthermore, the counsel also stress that no video recording was made as required under Section 17 (2) of the Act. He urged that all witnesses are police officials with vested interests, there was no corroborative evidence and that his implication is due to enmity. 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, mala fide, and lack of credible evidence.

6. Mr. Siraj Ahmed Bijarani, the learned Assistant Prosecutor General, (A.P.G.) Sindh opposes the bail, arguing that the Petitioner was caught red-handed with “Ice” under Section 9 (2) 3 of Sindh Control of Narcotics 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. Allegations of political victimisation are termed baseless and unsubstantiated. The learned APG contends that while video recording under Section 17(2) is desirable, its absence is not fatal to the prosecution case. Given the gravity of the offence, the quantity of narcotics recovered 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 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.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 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 the presence of prohibited substances *"concealed in any building, place, premises or conveyance."* In such circumstances, the law recognises the 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

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"

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 the 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, the precise location of recovery and the presence of responsible officers at the time of preparation of “*Mashirnama*” (*Inspector 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**²,

²Zahid Sarfaraz Gill v. the State [2024 SCMR 934]: **Qazi Faez Isa, CJ,** “6. In narcotic cases the prosecution witnesses usually are ANF personnel or policemen who surely would have a cell phone with an in-built camera. Personnel of those arrested with narcotic substances generally there are only a few witnesses, and most, if not all, are government servants. However, trials are unnecessarily delayed, and resultantly the accused seek bail first in the trial court which if not granted to them is then filed in the High Court and there too if it is declined, petitions seeking bail are then filed in this Court. If the police and ANF were to use their mobile phone cameras to record and/or take photographs of the search, seizure and arrest, it would be useful evidence to establish the presence of the accused at the crime scene, the possession by the accused of the narcotic substances, the search and its seizure. It may also prevent false allegations being levelled against ANF/police that the narcotic substance was foisted upon them for some ulterior motives.

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**³, 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 that the powers of entry, search, seizure and arrest

9. Copy of this order be sent to the Secretary Ministry of Narcotics Control, Government of Pakistan, Director-General, Anti-Narcotics Force, the Secretaries of the Home Departments of all the provinces, Inspector-Generals of Police of all the provinces and of the Islamabad Capital Territory. They may also consider whether they want to amend the ANF/Police rules to ensure making video recordings/ taking photographs whenever possible with regard to capturing, preserving and using such evidence at trial.”

³**Muhammad Abid Hussain v. The State [2025 SMCR 721]**; Muhammad Hashim Khan Kakar, J, “5.At the very outset, it would be relevant to state that the Act of 1997 prescribes severe punishments for the possession and, sale of narcotic substances. Given the gravity of the penalties, the standard of proof required to establish guilt must be correspondingly high. The prosecution must demonstrate beyond reasonable doubt that the petitioner was in possession of narcotic substance and that it was intended for sale. Article 164 of Qanun-e-Shahadat Order, 1984 emphasizes the importance of modern devices and techniques in the collection of evidence. It provides that evidence obtained through modern devices, such as video recordings, should be given due weight in judicial proceedings. This provision underscores the need for law enforcing agencies to adopt contemporary methods to ensure the accuracy and reliability of evidence. In this regard, in a criminal case titled *Zahid Sarfaraz Gill v. State* (2024 SCMR 934), this Court had granted bail after arrest to an accused carrying 1833 grams of charas which, as per the table in section 9(1) of the Act of 1997, comes under clause (c) of its third category and prescribes a minimum imprisonment of nine years and a maximum of fourteen years and fine, on the ground that why the police and members of the Anti-Narcotics Force do not record or take photographs when search, seizure and/or arrest is made. Article 164 of the Order, 1984 specially permits the use of any evidence that may have become available because of modern devices or techniques, and its Article 165 overrides all other laws. This Court had sent the copy of the order *ibid* to the Secretary, Ministry of Narcotics Control, Government of Pakistan, Director General Anti-Narcotics Force, the Secretaries of the Home Departments of all Provinces, Inspector Generals of Police of all the provinces and of the Islamabad Capital Territory to consider whether they want to amend the ANF/Police rules to ensure making video recordings/taking photographs whenever possible with regard to capturing, preserving and using such evidence at trial.”

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 the sake of convenience, I want to reproduce the sections 16, 17 and 18 under Chapter-III of the Act as under:-

CHAPTER – III

SEARCH AND INVESTIGATION

16. Power to issue warrants. – (1) A Special Court/competent court may issue a warrant for the arrest of any person whom it has reasons to believe to have committed an offence punishable under this Act, or for the search, whether by day or by night, of any building, place, premises or conveyance in which he has reason to believe any narcotic drug, psychotropic substance, precursor chemical or controlled substance in respect of which an offence punishable under this Act has been committed is kept or concealed.

(2) The officer to whom a search warrant under sub-section (1) is addressed shall have all the powers of an officer acting under section 17.

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 the 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 the legal principles governing 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 the prosecution’s version sufficient to bring the case within the 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 the alleged recovery, in order to secure the relief sought or to justify its denial. In essence, the quantum of the narcotic substance, though relevant, is not an absolute bar to the grant of bail. The question ultimately hinges upon the *prima facie* integrity of the recovery proceedings and the likelihood of the accused being connected to the offence in the manner alleged. In this context, it is pertinent to note that the term “narcotic drug” under the Sindh Control of Narcotic Substances Act, 2024, includes **methamphetamine**, which is specifically defined under Section 2 (x) (ii) of the Act. Furthermore, Schedule III(a) of the Act, at Serial No.49, lists methamphetamine as its international non-proprietary name. Its commonly known or trivial names include “**Ice**,” “Chalk,” and “Crystal,” while its chemical name is identified as N-Methyl-1-phenyl-propan-2-amine. Accordingly, the substance allegedly recovered in the present case falls squarely within the statutory definition of a narcotic drug under the Act. The alleged **recovery of 65 grams of “Ice”** directly attracts the provisions of Section 9 (2) (3) of the Act, which prescribes a sentence of imprisonment that **may extend to three years but shall not be less than two years, along with a fine which may be up to three hundred thousand rupees**. It is pertinent to underscore that the minimum punishment provided—being two 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. While it is settled law that Section 103 Cr.P.C. is rendered inapplicable to offences under the CNS Act, owing to its exclusion by virtue of Section 25 of the said Act. In the instant case, the alleged recovery was effected by an Assistant Sub-Inspector of Police, who also proceeded to lodge the FIR. However, 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, the 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. In the present case, the recovery proceedings were initiated by an officer lacking the requisite legal rank and authority and no

compliance with the mandatory requirement of video recording or documentation has been demonstrated. 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. It is equally important to reiterate the settled principle laid down by the Honourable Supreme Court in the case of *Zahid Sarfraz v. The State [SUPRA]*, wherein, it was held that benefit of doubt may be extended even at the bail stage, if warranted by the facts and circumstances of the case.

13. 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 Sindh Control of Narcotics Substances Act, 2024, 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 is *allowed*. The petitioner, **Peer Bux son of Khamiso**, was ordered to be released on bail upon 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 through our

short order dated 27.05.2025. These are the reasons for our above said short order. The instant petition stands **allowed**.

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

JUDGE

JUDGE

****Abdullahchanna/PS****