

HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 703 of 2025

(*Taimoor Kanhar v. The State*)

Present:

Mr. Arbab Ali Hakro, J.

Mr. Abdul Hamid Bhurgri, J.

Date of hearing : **05.06.2025**

Date of decision : **05.06.2025**

Mr. Humail Rafi Mahessar, Advocate for petitioner.

Mr. Aftab Ahmed Shar, Additional Prosecutor General.

ORDER

Arbab Ali Hakro, J. – Through this Constitution Petition, petitioner Taimoor, son of Raheem Bux, by caste Kanhar, seeks his release on post-arrest bail in Crime No.40 of 2025, registered at Police Station Pir-Jo-Goth, District Khairpur, for an offence under Section 9(1), Sr. No.1(b) of the Control of Narcotic Substances (Amendment) Act, 2022 (“**Act of 2022**”).

2. As per the contents of the FIR, the allegation against the petitioner is that on 20.04.2025 at 2000 hours, he was apprehended by a police party led by ASI Deedar Ali Odhano of Police Station Pir-Jo-Goth while present on the link road connecting Kingri Nako to Kanhar Mor near Grid Station Pir-Jo-Goth. It is asserted that during his arrest, the petitioner was found in possession of 2200 grams of Bhang, allegedly recovered from his custody. This purported recovery serves as the foundational basis of the prosecution’s case against him.

3. Learned counsel for the petitioner contends that the petitioner, a poultry shop owner, has been falsely implicated in the present case. He argues that on the morning of the alleged incident, a dispute arose between the petitioner and PC Anees-ur-Rehman, cited as a *mashir* and eyewitness, over the demand for illegal gratification. Furthermore, it is asserted that the purported recovery of 2200 grams of Bhang is marred by uncertainty and lacks independent corroboration. No neutral

witness was present at the time of the alleged recovery, in violation of Section 103, Cr.P.C., and the recovery was neither documented through photographs nor video-recorded, despite repeated directives of the Supreme Court of Pakistan emphasizing the necessity of employing modern technology in evidentiary matters, as stipulated under Article 164 of the Qanun-e-Shahadat Order, 1984. Counsel also highlights that the recovery purportedly occurred in a busy public area. Yet, no effort was made to secure the presence of an impartial witness, rendering the prosecution's case fraught with serious doubts. In light of these circumstances, counsel maintains that the matter warrants further inquiry.

4. Conversely, learned Additional Prosecutor General opposes the bail plea and contends that given the purported recovery of narcotics from the petitioner's possession and the prompt registration of the FIR, there exists sufficient *prima facie* material to establish a nexus between the petitioner and the alleged offence.

5. Having heard the learned counsel for the petitioner as well as the learned Additional Prosecutor General, and upon meticulous perusal of the record, the matter stands for determination in accordance with the settled principles of law.

6. Perusal of the record reveals that subject FIR was registered on 20.04.2025 under the Act of 2022, despite the promulgation of the Sindh Control of Narcotic Substances Act, 2024 ("**Act of 2024**") on 29.10.2024, which repealed the previous statute. Under Section 35(1) of the Act of 2024, the application of Sections 496 and 497 Cr.P.C. has been unequivocally barred, ousting the jurisdiction of subordinate courts in narcotics-related bail matters. Given that the FIR in question was mistakenly registered under the Act of 2022, despite the offence occurring after the promulgation of the Act of 2024, the legal position suggests that the correct law should apply. However, procedural errors in FIR registration can be rectified during the investigation, and the Investigating Officer (I.O.) has the authority to amend the charges accordingly. Thus, the constitutional petition route remains viable for challenging the FIR's applicability under the correct legal framework. Furthermore, since the final challan has yet to be submitted by the

I.O., the prescribed punishment under both statutes remains identical, ranging from a minimum of three years to a maximum of seven years. The petitioner may seek an appropriate remedy if any jurisdictional objections are raised later.

7. However, in view of the fundamental rights enshrined under Articles 9, 10-A, and 14 of the Constitution, the High 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 of Pakistan in the case of **Khan Asfandiyar Wali**¹, wherein it was authoritatively held that statutory ouster clauses cannot supersede constitutional jurisdiction when fundamental rights are in question.

8. Recently, in the case of **Muhammad Abid Hussain**², 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 cast 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.

9. In the present case, while the alleged recovery amounts to 2200 grams of Bhang, the circumstances surrounding the seizure raise substantial doubts. Notably, the recovery was effectuated by an ASI who, under the applicable legal framework, lacks the requisite authority to conduct such a search and seizure. Furthermore, the prosecution has failed to produce any video or photographic evidence to substantiate the recovery, nor was any independent witness associated with the proceedings, thereby contravening established procedural safeguards. These deficiencies, coupled with the manner in which the recovery

¹ Khan Asfandiyar Wali v. Federation of Pakistan (PLD 2001 SC 607)

² Muhammad Abid Hussain v. The State (2025 SCMR 721)

was allegedly conducted, cast serious doubt on the prosecution's case. In view of these cumulative factors, the matter squarely falls within the ambit of further inquiry.

10. It is a well-established principle of law that when the prosecution's case hinges exclusively on testimony from police witnesses, without independent corroboration, particularly in narcotics-related matters carrying severe legal consequences, the benefit of the doubt must be extended to the accused. This principle applies even at the stage of bail consideration, ensuring that the presumption of innocence remains safeguarded until the case is subjected to thorough judicial scrutiny.

11. Accordingly, the instant petition stands **allowed**. Petitioner Taimoor, son of Raheem Bux, by caste Kanhar, is admitted to post-arrest bail in Crime No.40 of 2025, registered at Police Station Pir-Jo-Goth, subject to his furnishing a solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand) and a P.R bond in the like amount, to the satisfaction of the Additional Registrar of this Court.

12. Needless to state, the observations recorded herein are tentative and shall not, in any manner, prejudice or influence the trial Court during the adjudication of the case.

Above are the reasons for our short order dated 05.06.2025.

J U D G E

J U D G E

Abdul Basit