

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No.D-689 of 2025

Before:

*Mr. Justice Arbab Ali Hakro;
Mr. Justice Abdul Hamid Bhurgri.*

Petitioner : Shahzado son of Kamaluddin Gorgage,
through Mr. Waqar Ali Phulpoto,
Advocate.

Respondents : The State and others,
through Mr. Aftab Ahmed Shar,
Additional Prosecutor General Sindh.

Date of Hearing: 05.06.2025.

Date of Order. 05.06.2025.

ORDER

Abdul Hamid Bhurgri, J.- Through this petition, the petitioner has prayed for grant of post arrest bail in the crime No.43/2025 for offence punishable Under Section 9(c) of the Sindh Control of Narcotic Substances, Act, 2024 (hereinafter it will be referred as Act, 2024) of PS Setharja, district Khairpur.

2. While Section 35(1) of the Act, 2024, creates a statutory bar on the grant of bail by the ordinary criminal courts, such restriction does not curtail the constitutional jurisdiction of this Court under Article 199 of the Constitution. The availability of constitutional remedy is well-recognized in cases where the statutory framework either expressly bars or effectively denies access to judicial relief, particularly where fundamental rights, including the right to liberty and fair trial under Articles 9 and 10-A, are implicated. It is now firmly settled through judicial pronouncements that in circumstances where no alternate or efficacious remedy exists due to a legislative embargo, the High Court, in exercise of its constitutional jurisdiction, may examine and grant appropriate relief. Section 35(1) of the Act, 2024 reads 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”.

3. Accordingly, in view of the bar imposed under section 35(1) of the Act, 2024 mentioned supra, this petition is found to be maintainable Under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. 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)***.

4. As per the contents of the FIR dated 04.05.2025, the complainant, ASI Sain Bux, along with his subordinates PCs Atta Hussain, Majid Ali, and DPC Mureed Hussain, departed the police station for routine patrolling at 1100 hours, as recorded under entry No.07 of the daily diary. Upon completion of patrol duties across various locations, the police party arrived at Touqeer Abad stop, where they observed an individual with an apparent disability in his right leg, holding a black plastic shopper. Upon sighting the police party, the said individual exhibited signs of nervousness, which aroused suspicion, leading to his apprehension at approximately 1130 hours along with the black shopper. Due to the unavailability of private witnesses at the scene, PCs Atta Hussain and Majid Ali were duly appointed as official mashirs. Upon initial inquiry, the individual disclosed his identity as Shahzado. A search of the recovered shopper revealed five pieces of charas, which, including the shopper, were found to weigh 1225 grams and were sealed on the spot. A subsequent personal search of the accused resulted in the recovery of two currency notes of Rs.100/- each from his right-side pocket. The mashirnama of arrest and recovery was prepared by the complainant in the presence of the appointed mashirs. Thereafter, the accused, along with the recovered narcotics and seized currency, was transported to the police station, where the instant FIR was formally lodged.

5. Learned counsel for the petitioner contended that the petitioner, being physically disabled in his right leg, has been falsely implicated by the police with mala fide intent and ulterior motives. He submitted that although the alleged recovery took place in a densely populated area, no independent local person was cited either as a mashir or witness, thereby rendering the prosecution's version doubtful and meriting further inquiry.

He, therefore, prayed for the grant of bail, invoking the broader interests of justice.

6. Conversely, the learned Additional Prosecutor General, Sindh, vehemently opposed the petition and urged for its outright dismissal on the ground that the petitioner was apprehended red-handed, and a substantial quantity of contraband was recovered from his exclusive possession. It was thus submitted that the petitioner is not entitled to the concession of bail.

7. We have heard learned counsel for the parties and examined the record with circumspection.

8. A tentative assessment of the material available on record reflects that the alleged recovery was effected from thickly populated area. Yet, no independent witness was associated with the recovery proceedings, despite the location being frequented by the general public. 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 upon the cases of ***Muhammad Abid Hussain v. The State (2025 SCMR 721)*** and ***Zahid Sarfaraz Gill v. The State. (2024 SCMR 934)***.

9. Furthermore, it is an admitted position that the petitioner is a ***physically disabled person***, which raises a reasonable doubt with respect to his active participation in the alleged offence. In the totality of these factors, the case against the petitioner appears to be one of further inquiry as contemplated under Section 497(2) Cr.P.C. It is a well-entrenched principle that in cases hinging solely on police testimony, particularly where the legal consequences are severe, 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)***.

10. In view of the above tentative evaluation of evidence, this petition is allowed, and the petitioner is admitted to post-arrest bail, subject to

furnishing solvent surety in the sum of Rs.1,00,000/- with a P.R bond in the like amount to the satisfaction of the Additional Registrar of this Court.

11. Needless to observe, the foregoing findings are tentative in nature and shall not prejudice the trial Court in determining the matter on merits.

12. Above are the reasons of our short order of even date.

Judge

Judge

ARBROHI