

THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Present:

Mr. Justice Abdul Mobeen Lakho

Mr. Justice Zulfiqar Ali Sangi

Criminal Bail Application No.D-161 of 2026

Applicant: Yar Muhammad alias Raja through Mr. Liaquat Ali Mirbahar, Advocate.

Respondent: The State through Ms. Rameshan Oad, D.P.G. Sindh.

Date of hearing: 13.08.2026.

Date of order: 13.08.2026.

O R D E R

ZULFIQAR ALI SANGI, J: - By this order, we intend to decide the instant post-arrest bail application filed by the applicant/accused Yar Muhammad alias Raja son of Mushtaq Ahmed, seeking his release on bail in Crime No.157 of 2025, registered at Police Station Matiari, for an offence punishable under Section 9(1)-3(C) of the Sindh Control of Narcotic Substances Act, 2024 (hereinafter referred to as “the Act”), after dismissal of his earlier bail application by the learned Additional Sessions Judge/Special Judge, CNS, Matiari, vide order dated 09.03.2026.

2. Briefly stated, the prosecution case, as narrated in the FIR, is that on 08.11.2025 at about 11:00 a.m., complainant ASI Syed Intizar Ali Shah, accompanied by other police officials, was performing patrolling duty in a government vehicle. Upon reaching near the Shrine of Abis Pir, Matiari, the police party allegedly noticed the applicant carrying a black plastic bag. On seeing the police vehicle, the applicant allegedly attempted to escape but was apprehended after a short chase at a distance of approximately ten steps. Upon search of the said plastic bag, **1020 grams of charas**, allegedly contained in three pieces, was recovered from his possession. The recovered narcotic substance was allegedly weighed through the investigation kit available in the police vehicle, thereafter sealed and taken into possession through a mashirnama in the presence of the accompanying police officials. The applicant was subsequently brought to the police station, whereupon the present FIR was registered.

3. Learned counsel for the applicant has contended that the applicant is innocent and has been falsely implicated due to previous enmity with the Memon community and, in particular, because of his involvement in an earlier criminal case, in which he was subsequently acquitted along with his brothers. He submits that the alleged recovery has been planted upon the applicant and that the prosecution version is attended by material discrepancies requiring further inquiry. It is further argued that the alleged place of recovery was a public and populated place; nevertheless, no independent person from the locality was associated with the alleged recovery or arrest. According to learned counsel, the mashirs are police officials subordinate to the complainant and, therefore, their evidence requires cautious appraisal at trial. Learned counsel has further drawn our attention to the alleged non-compliance with the mandatory statutory requirement relating to video recording of the arrest and recovery proceedings under Section 17(2) of the Act. It is contended that no video recording of the proceedings, as contemplated by law, was made by the complainant. Conversely, a video allegedly depicting the arrest of the applicant from Taluka Hospital, Matiari, was produced before the learned Trial Court, which, according to learned counsel, materially contradicts the place of arrest reflected in the FIR. It is argued that the said video was neither properly examined nor discussed in the impugned order. Learned counsel submits that such circumstances create a reasonable doubt regarding the prosecution's account of the arrest and recovery and bring the case within the ambit of further inquiry. Lastly, it is submitted that investigation has already been completed, the applicant has remained behind bars since his arrest, no further recovery is required from him, and his continued incarceration would serve no useful purpose. He, therefore, prays for grant of post-arrest bail.

4. Conversely, learned D.P.G., Sindh, has vehemently opposed the application. She submits that the applicant was apprehended at the spot and that a substantial quantity, i.e. **1020 grams of charas**, was recovered from his conscious possession. According to her, the recovery is duly supported by the mashirnama and the statements of the police officials who witnessed the proceedings. She contends that merely because the witnesses are police officials, their testimony cannot be discarded or treated as inherently unreliable. She further submits that the alleged video and other pleas raised by the defence are matters of evidence which can properly be examined by the Trial Court after

recording of evidence. She has, therefore, prayed for dismissal of the bail application.

5. We have heard learned counsel for the applicant, learned D.P.G., Sindh, and have carefully examined the available material with their assistance.

6. It is by now well settled that at the stage of bail the Court is not required to conduct a deeper appreciation or meticulous examination of the evidence, nor is it expected to determine the guilt or innocence of the accused conclusively. The Court is required to make a tentative assessment of the material available on record for the limited purpose of determining whether reasonable grounds exist for believing that the accused is connected with the commission of the offence, or whether the circumstances appearing on the record bring the case within the scope of further inquiry contemplated by Section 497(2), Cr.P.C. At this stage, the Court must avoid undertaking a mini-trial or recording findings which may prejudice either party at the trial.

7. In the present case, the alleged recovery of 1020 grams of charas undoubtedly constitutes a serious incriminating circumstance against the applicant. However, the mere fact of recovery does not, by itself, foreclose the statutory jurisdiction of the Court to examine whether the circumstances attending such recovery give rise to further inquiry. The prosecution alleges that the applicant was apprehended near the Shrine of Abis Pir, Matiari, which is admittedly a public place. Despite the availability, according to the prosecution's own version, of members of the public in the vicinity, no independent person was associated with the alleged arrest, search or recovery. The mashirs are admittedly police officials accompanying the complainant. We are conscious of the settled proposition that the testimony of a police official cannot be discarded merely because of his official status. There is no rule of law which renders the evidence of police witness inadmissible or inherently unreliable. Nevertheless, where the alleged recovery is the principal incriminating circumstance and is said to have been effected at a public place, the absence of any independent witness is a circumstance which may legitimately be taken into account while making a tentative assessment of the prosecution case. The question whether the police witnesses acted fairly and whether the recovery was in fact effected in the

manner alleged remains a matter to be determined by the Trial Court after recording and evaluating the evidence.

8. Another circumstance requiring consideration is the alleged compliance with Section 17(2) of the Sindh Control of Narcotic Substances Act, 2024, concerning video recording of the proceedings relating to arrest and recovery. The applicant has specifically taken the plea that the statutory requirement was not complied with. More importantly, the defence has referred to a video allegedly showing the arrest of the applicant from Taluka Hospital, Matiari, whereas the FIR projects his apprehension near the Shrine of Abis Pir. The applicant's contention is that the said video was produced before the learned Trial Court but was not appropriately considered or dealt with in the impugned order. At this stage, we are not inclined to record any final finding regarding the authenticity, genuineness, evidentiary worth or ultimate legal effect of the said video. Nevertheless, where the defence relies upon material which, if ultimately proved, may have a bearing upon the place and manner of arrest, and consequently upon the prosecution's account of the recovery, the same cannot be altogether ignored while making a tentative assessment for purposes of bail. Whether the video is genuine, whether it depicts the applicant, whether it was properly produced and proved, and what legal consequence may ultimately flow therefrom are questions which necessarily require examination by the Trial Court upon recording of evidence.

9. We have also considered the plea of previous enmity and false implication. The alleged acquittal of the applicant in an earlier criminal case, standing alone, would not constitute sufficient ground to presume that the present narcotics case has also been fabricated. Likewise, previous enmity is essentially a matter requiring proof and cannot, by itself, be made the sole basis for granting bail. However, the Court is required to consider the circumstances collectively rather than in isolation. In the present case, the plea of false implication, when examined in conjunction with the absence of independent mashirs despite the alleged recovery having taken place at a public place, the controversy concerning the actual place of arrest, and the alleged non-compliance with the statutory requirement of video recording, gives rise to questions which cannot safely be resolved conclusively at the bail stage.

10. It is also material that the investigation has admittedly been completed and the applicant has remained in custody since his arrest. Nothing has been brought on record to demonstrate that his further custodial interrogation is necessary or that any further recovery is required to be effected from him. Although completion of investigation, by itself, is not an absolute ground for grant of bail in every case, continued incarceration of an accused must have a lawful and justifiable purpose. Pre-trial detention is primarily intended to secure the presence of the accused at trial and to prevent interference with the course of justice; it is not intended to operate as a substitute for punishment before conviction.

11. Upon a cumulative and tentative assessment of the material available on record, we are of the considered view that certain aspects of the prosecution case, particularly the circumstances surrounding the arrest and recovery and the alleged compliance with the statutory requirement of video recording, require deeper examination at the trial. These questions cannot appropriately be resolved through a detailed appreciation of evidence at the present stage. The material on record, therefore, does not permit us to hold that the prosecution case is free from doubt for purposes of bail. Rather, the circumstances discussed above bring the case within the ambit of further inquiry as contemplated by Section 497(2), Cr.P.C. It is a settled principle that where a case falls within the scope of further inquiry, the accused becomes entitled to the concession of bail as a matter arising from the statutory scheme. The Court, at the bail stage, is not required to determine whether the applicant will ultimately be acquitted or convicted. The only question presently before us is whether the material on record, assessed tentatively, warrants his continued incarceration. Having regard to the circumstances discussed above, we are persuaded that it does not.

12. Consequently, the instant Criminal Bail Application is allowed. The applicant/accused **Yar Muhammad alias Raja son of Mushtaq Ahmed** is admitted to post-arrest bail in Crime No.157 of 2025, registered at Police Station Matiari, subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand only) and P.R. Bond in the like amount to the satisfaction of the learned Trial Court. The learned Trial Court shall, however, ensure that the applicant's presence is secured on each and every date of hearing and that he does not misuse the concession of bail in any manner. In case of misuse of the concession

of bail, the prosecution shall be at liberty to seek its cancellation in accordance with law.

13. Before parting with the matter, it is clarified that the observations made herein are purely tentative and confined solely to the determination of the present bail application. Nothing contained in this order shall be construed as an expression of opinion on the merits of the prosecution case or the defence version. The learned Trial Court shall decide the case strictly on the basis of evidence brought on record, uninfluenced by any observation made herein.

14. These are the reasons for our short order dated **13.08.2026**.

JUDGE

JUDGE

Abdullah Channa/PS