

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Bail Application No.D-198 of 2026

Present:

Justice Muhammad Faisal Kamal Alam
Justice Tasneem Sultana

Applicant : Abdul Ghaffar through Mr. Asadullah
Soomro, Advocate.

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

Date of Hearing : 13-08-2026
Date of Order : 13-08-2026

O R D E R

TASNEEM SULTANA, J.- Through this Crl. Bail Application, the applicant, Abdul Ghaffar so Shamsuddin Bozdar seeks post-arrest bail in Crime No.114 of 2026, registered under Section 9(1)(3)(c) of the Sindh Control of Narcotic Substances Act, 2024 (SCNSA) at Police Station, Mirpur Mathelo, after his post-arrest bail application was declined by the learned Sessions Judge/Special Judge CNS, Ghotki, vide order dated 24.06.2026.

2. The detailed facts of the case are already set out in the bail application and the FIR and, therefore, need not be reproduced here.

3. Learned counsel for the applicant contends that the applicant is innocent and has falsely been implicated in the present case; that the alleged recovery has been foisted upon him; that there is unexplained delay of about one hour in registration of the FIR despite the place of occurrence being situated at a short distance from the police station; that no private mashir was associated despite the alleged recovery having been effected

from a public place and, therefore, the provisions of Section 103, Cr.P.C were not complied with; that the mandatory requirement of video recording under Section 17(2) of the Sindh Control of Narcotic Substances Act, 2024 was not complied with; therefore, his case falls within the ambit of further inquiry and he is entitled to the concession of post-arrest bail.

4. Conversely, learned Additional Prosecutor General opposes the instant bail application and contended that the applicant is specifically nominated in the FIR and was apprehended at the spot; that, as per the CRO, apart from the present case, the applicant has been booked in as many as 14 criminal cases involving offences of almost similar nature; therefore, he is not entitled to the concession of post-arrest bail.

5. Heard and record perused.

6. It reflects from the record that the applicant was allegedly apprehended during routine patrolling and 1230 grams of Charas was recovered from his possession. The sample was separately forwarded to the Chemical Examiner, whose report confirms that it contained Charas. Prima facie, therefore, the alleged recovery finds support from the forensic report. The record further reflects that the applicant has previously been booked in 15 criminal cases, including the present one. His previous involvement in almost similar criminal cases is also a circumstance emerging from the record which cannot altogether be overlooked at this stage.

7. The alleged offence falls under Section 9(1)(3)(c) of the Sindh Control of Narcotic Substances Act, 2024, which is punishable with imprisonment that may extend to fourteen years but shall not be less than nine years, along with a fine up to five hundred thousand rupees, but not

less than one hundred thousand rupees. In the case of **Jabran and another versus The State through Director General FIA and others (2025 SCMR 1099)**, the Honourable Supreme Court of Pakistan has discussed the question of imposition of maximum sentence. The relevant portion is reproduced as under:-

"6. We have gone through the referred judgments and have not been persuaded by the argument of the learned counsel that the minimum period of sentence is to be considered at bail stage for the purpose of section 497(1) Cr.P.C. Such interpretation is not supported by any law or subsequent jurisprudence established by this Court. At bail stage, the Court is not to undertake any speculative exercise or guess work regarding the probable length of sentence that will likely be awarded at the end of a trial. Doing so would amount to a deeper appreciation of evidence, which is prohibited at bail stage. Additionally, any such attempted categorization of sentencing or speculation at bail stage could prejudice future proceedings by pre-empting the mind of the Trial Court."

In recent judgment in **Barkat Ullah versus The State and another, Crl. Misc. No.431-B/2024**, it is held by the Larger Bench of Islamabad High Court that:-

"(a) The expression "punishable" used in section 497(1) Cr.P.C. refers to the maximum punishment provided for an offence. Thus if an offence is punishable by ten years or more, then subject to other legal grounds, the same would attract statutory prohibition contained in section 497(1) Cr. P.C. and

(b) It is held that if provision of the Act of 1997 provides for maximum punishment of ten years and more, it shall attract the prohibitory clause of section 497(1), Cr.P.C. The applicability of the term "borderline case" developed in the context of erstwhile provisions of the Act of 1997 i.e. section 9(c), would amount to anticipating possible period of conviction at bail stage, which exercise is not permissible while making tentative assessment of a criminal case."

In another case of **Muhammad Aslam versus The State (2023 SCMR 2056)**, the Honourable Supreme Court of Pakistan has observed as under:-

"The offence is heinous in nature as it contributes to the menace of drugs having grave repercussions on the society. Prima facie the material available on the record connects the petitioner with the commission of the crime. The offence falls within the prohibitory clause of section 497, Cr.P.C. The impugned order is well reasoned, proceeds on correct principles of law on the subject and does not call for interference by this Court."

8. Learned counsel has mainly stressed that no private mashir was associated and that the proceedings relating to the alleged recovery and arrest were not documented through video or photographs and has relied upon Muhammad Abid Hussain versus The State and another (2025 SCMR 721). In the said case, the Honourable Supreme Court of Pakistan observed as under: -

"6. In the present case neither any video in the shape of recording and photographs of the alleged recovery has been collected by the police nor any private witness from the locality was associated to prove the alleged recovery from the possession of the petitioner. As stated above, the use of modern devices during recoveries is not merely a procedural formality but a crucial safeguard to protect innocent persons from potential police atrocities. It provides an objective and unbiased account of the recovery process, reducing the risk of false implications and ensuring that the rights of the accused are protected. In the cases of stringent punishments, the prosecution must present clear, cogent and reliable evidence to prove the accused's guilt beyond a reasonable doubt. In the absence of video evidence and independent witnesses, the prosecution's case relies heavily on the testimony of the police officers involved in the raid, which is insufficient to meet the required standard of proof."

The Honourable Supreme Court further observed as under: -

"7. We strongly recognize the need to combat the menace of narcotics; however, it must also be ensured that the rights of the accused are protected. The failure to record the recovery on video, non-association of private witnesses and failure to adhere clear judicial directives, tilts the balance in favour of the petitioner."

9. There can be no dispute with the principle emphasized by the Honourable Supreme Court regarding the importance of modern devices in

narcotics cases. However, the observations in *Muhammad Abid Hussain* (supra) are to be appreciated in the context of the cumulative circumstances considered therein. In the present case, the applicant is alleged to have been apprehended during patrolling at a public place, and the contraband was allegedly recovered from the shopping bag / plastic bag in his possession. Section 103, Cr.P.C. stands excluded from searches and arrests made under the narcotics law and, therefore, non-association of a private mashir does not, by itself, render the alleged recovery doubtful. Section 17 of the Sindh Control of Narcotic Substances Act, 2024 deals with entry, search, seizure and arrest without warrant in the circumstances contemplated therein, whereas seizure and arrest in a public place are separately dealt with under Section 18 of the Act. In these circumstances, the absence of videography, by itself, cannot be regarded as sufficient to displace the other material available on record or to bring the case within the ambit of further inquiry. Its evidentiary effect, along with the remaining evidence, shall be assessed by the learned trial Court in accordance with law.

10. In view of the above facts and circumstances, the applicant has failed to make out a case for grant of post-arrest bail. Consequently, this Crl. Bail Application is **dismissed**.

11. Needless to observe, the trial Court shall proceed independently on the basis of the evidence adduced before it, uninfluenced by the observations made hereinabove.

J U D G E

J U D G E