

THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Present:

Mr. Justice Abdul Mobeen Lakho

Mr. Justice Zulfiqar Ali Sangi

Criminal Bail Application No.D-85 of 2026

Applicant: Shams Khatoon through Mr. Malik Bux Mari,
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: - Through this order, we intend to decide the instant post-arrest bail application filed by the applicant/accused **Shams Khatoon wife of Shad Muhammad**, seeking her release on bail in **Crime No.17 of 2026**, registered at Police Station Site, Hyderabad, for an offence punishable under **Section 9(1)-3(C) of the Sindh Control of Narcotic Substances Act, 2024**, after dismissal of her earlier bail application by the learned Sessions Judge/Special Judge (CNSA), Hyderabad, vide order dated **02.03.2026**.

2. Briefly stated, the prosecution case, as narrated in the FIR, is that on **01.02.2026**, complainant SIP Ayaz Hayat Baladi, accompanied by other police officials, was performing patrolling duty when, allegedly upon receipt of spy information, the police party proceeded towards Fateh Chowk. At the stated place, the applicant was allegedly seen standing on the road while carrying a black-coloured shopper. According to the prosecution, upon noticing the police party, she attempted to move away but was apprehended with the assistance of a female police official. It is alleged that, as no private person was available at the spot, two police officials accompanying the complainant were associated as mashirs. Upon search of the shopper allegedly found in the possession of the applicant, **four pieces of charas weighing 2025 grams** were purportedly recovered. The alleged narcotic substance was thereafter secured and sealed, while the arrest and recovery proceedings were stated to have been video-recorded. Subsequently, the present FIR was registered against the applicant.

3. Learned counsel for the applicant, while seeking her release on post-arrest bail, contended that the applicant is an **elderly woman of about 66 years of age**, suffering from various ailments and having no previous criminal history or involvement in any other narcotics case. It was argued that the alleged recovery has been falsely foisted upon the applicant and that the prosecution version, even on its face, requires cautious and tentative scrutiny. Learned counsel emphasized that the alleged recovery was effected from a **public place**, yet no independent person from the locality was associated with the proceedings, whereas both mashirs are admittedly police officials forming part of the same police party. It was further argued that the prosecution has not satisfactorily explained the circumstances surrounding the alleged dispatch of the case property to the Chemical Examiner, particularly with regard to the time consumed in such dispatch and its safe custody during the intervening period. According to learned counsel, these aspects give rise to reasonable doubt regarding the safe preservation and unbroken chain of custody of the alleged narcotic substance. It was further submitted that the applicant, being a woman of advanced age and allegedly suffering from ailments, deserves the benefit of the statutory concession available to a woman under the proviso to Section 497(1), Cr.P.C. Learned counsel, therefore, contended that the case squarely falls within the ambit of **further inquiry** as contemplated by Section 497(2), Cr.P.C., and prayed for grant of bail.

4. Conversely, learned D.P.G., Sindh, opposed the application and contended that the applicant was apprehended at the spot and that **2025 grams of charas** was recovered from her possession. She maintained that the recovery proceedings were conducted in accordance with law and were duly supported by the police witnesses associated with the proceedings. It was further submitted that the mere fact that the witnesses are police officials does not render their evidence inadmissible or unreliable, particularly when they are official witnesses performing their lawful duties. She, therefore, prayed for dismissal of the bail application.

5. We have heard the learned counsel for the parties and have gone through the available record with their assistance.

6. It is a settled principle governing the exercise of jurisdiction in matters of bail that, at this tentative stage, the Court is not required to

conduct a deeper appreciation or meticulous examination of the evidence, nor is it expected to finally determine the guilt or innocence of the accused. The Court is required to make a tentative assessment of the material available on record for the limited purpose of determining whether there exist reasonable grounds for believing that the accused is guilty of an offence falling within the prohibitory clause of Section 497(1), Cr.P.C., or whether the facts and circumstances of the case give rise to a reasonable possibility that the matter requires further inquiry within the meaning of Section 497(2), Cr.P.C.

7. In the present case, the alleged recovery of **2025 grams of charas** is, undoubtedly, a serious circumstance against the applicant. However, the mere quantity of the alleged narcotic substance cannot, by itself, foreclose the Court's consideration of other circumstances which have a material bearing upon the reliability and legal worth of the prosecution case. The manner in which the alleged recovery was effected and subsequently dealt with is therefore required to be tentatively examined.

8. According to the FIR itself, the alleged recovery was made at a **public place**, yet admittedly no private or independent person was associated with the search, arrest or recovery proceedings. Instead, the mashirs of the alleged recovery are police officials who were members of the same police party. It is correct that the testimony of a police official cannot be discarded merely on account of his official status, and there is no universal rule that a conviction cannot be founded upon the testimony of police witnesses. Nevertheless, where the prosecution itself alleges that the recovery took place at a public place, the non-association of any available independent person is a circumstance which may legitimately be taken into consideration, particularly at the stage of bail, when the Court is required to determine whether the prosecution case calls for further inquiry. The absence of independent corroboration, therefore, assumes relevance when considered along with the other circumstances appearing on record.

9. Another aspect requiring tentative consideration is the **chain of custody of the alleged narcotic substance**. The applicant has specifically questioned the timing and manner of dispatch of the case property to the Chemical Examiner, as well as its safe custody during the intervening period. In a narcotics case, the prosecution is required, at trial, to establish through legally admissible and confidence-inspiring

evidence that the substance allegedly recovered from the accused remained in safe, secure and untampered custody until its transmission to the Chemical Examiner and that the sample examined by the Chemical Examiner was the same substance which was recovered from the accused. Any unexplained gap, delay or infirmity in the safe custody or transmission of the case property may have a bearing upon the evidentiary value of the chemical report. At this stage, we are not finally determining these questions; nevertheless, the objections raised by the learned counsel cannot be brushed aside as wholly insignificant and require examination at the trial.

10. Likewise, the alleged video recording of the arrest and recovery proceedings does not, by itself, conclusively establish the prosecution case. Its authenticity, continuity, manner of preparation, preservation and evidentiary worth, as well as the circumstances depicted therein, are matters which would appropriately be tested during trial through legally admissible evidence. The same applies to the question whether the alleged narcotic substance was actually recovered from the conscious possession of the applicant in the manner alleged by the prosecution. Such matters cannot be finally resolved on the basis of a tentative assessment undertaken for the purpose of bail.

11. We also cannot lose sight of the **personal circumstances of the applicant**. She is stated to be a woman of about **66 years of age** and has asserted that she is suffering from ailments. She has further claimed that she has no previous criminal record and is not involved in any other narcotics case. The proviso appended to Section 497(1), Cr.P.C. specifically recognizes a concession in favour of a woman, subject of course to the facts and circumstances of each individual case. While neither age, gender nor alleged ailments constitute an automatic entitlement to bail, these circumstances are nevertheless relevant factors which the Court is required to keep in view while exercising its discretion. Furthermore, the record indicates that the **investigation has been completed and the challan has been submitted before the learned Trial Court**. The applicant is, therefore, no longer required for the purpose of further investigation. Continued incarceration in such circumstances must be justified by the material available against the accused and the requirements of the law governing bail, rather than being treated as a substitute for punishment before determination of guilt. The applicant is in custody and, subject to the satisfaction of the

learned Trial Court, there appears to be no immediate necessity for her further detention for investigative purposes.

12. It is also relevant that the offence alleged against the applicant, though undoubtedly serious, does not carry **death or imprisonment for life** as its prescribed punishment. Consequently, the question of bail is to be considered within the framework of Section 497, Cr.P.C., keeping in view all the attending circumstances rather than the alleged quantity of narcotic substance alone. Upon a cumulative assessment of the circumstances presently available on record, including the alleged recovery from a public place without association of any independent person, the fact that the mashirs are police officials belonging to the same police party, the questions raised regarding the safe custody and timely transmission of the case property to the Chemical Examiner, the applicant's advanced age and status as a woman, her asserted lack of previous criminal antecedents, and the fact that the investigation has already been concluded and the challan submitted, we are of the tentative view that the prosecution material, at this stage, requires further examination and that the case of the applicant **falls within the ambit of further inquiry as contemplated under Section 497(2), Cr.P.C.**

13. Needless to observe that the above circumstances are being considered only for the limited purpose of determining the applicant's entitlement to bail. We are not persuaded, at this stage, to undertake a deeper appreciation of the prosecution evidence or to record any final finding regarding the alleged recovery, conscious possession, safe custody of the case property or the ultimate evidentiary worth of the Chemical Examiner's report. Those matters shall be determined by the learned Trial Court after recording and appreciating the evidence in accordance with law. For the foregoing reasons, and without expressing any final opinion on the merits of the case, we are of the tentative view that the applicant has succeeded in making out a case for further inquiry within the meaning of Section 497(2), Cr.P.C. Accordingly, the instant Criminal Bail Application is allowed. The applicant/accused **Shams Khatoon wife of Shad Muhammad** is admitted to **post-arrest bail** subject to furnishing solvent surety in the sum of **Rs.200,000/- (Rupees Two Hundred Thousand only)** and P.R. Bond in the like amount to the satisfaction of the learned Trial Court.

14. The observations made herein are **tentative in nature**, confined strictly to the adjudication of the present bail application, and shall not prejudice or influence the learned Trial Court in deciding the case on its own merits after recording and appreciating the evidence in accordance with law.

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

JUDGE

JUDGE

Abdullah Channa/PS