

# HIGH COURT OF SINDH, BENCH AT SUKKUR

**Present:**

***Mr. Justice Zulfiqar Ali Sangi  
Mr. Justice Arbab Ali Hakro,***

## **Cr. Bail Application No.D-181 of 2026**

Applicant : Habibullah s/o Wale Dino by caste Abro,  
Through Mr. Shabbir Ali Bozdar, Advocate.

The State : Through Syed Sardar Ali Shah, Additional  
Prosecutor General, Sindh.

Date of hearing : 07.07.2026.

Date of decision : 07.07.2026.

## **ORDER**

**ARBAB ALI HAKRO, J:-** The applicant, Habibullah, seeks post-arrest bail in Crime No.208 of 2026, registered at Police Station Moro, under Section 9(1)(3)(B) of the Sindh Control of Narcotic Substances Act, 2024. The allegation is that on 09.05.2026, he was apprehended near Hazori Peer while allegedly carrying 600 grams of charas from his left side of shirt. The mashirnama was prepared on the spot by police officials, the property was sealed, and thereafter the FIR was lodged on behalf of the State. The learned Special Judge for CNS Naushahro Feroze earlier declined the applicant/accused's bail vide order dated 19.05.2026.

2. Learned counsel for the applicant/accused, at the outset, submits that the applicant is innocent and has falsely been implicated in this case by the police; that as per ingredients of Narcotics Act, the Complainant, being ASI, is not competent to lodge the FIR; that all the witnesses are police officials and that nothing was recovered from the applicant/accused's possession; rather, the alleged substance has been foisted upon him by the police to show their efficiency. He further contends that although the applicant/accused was allegedly arrested in a busy place, not a single private person has been cited

as a mashir or eye-witness to the incident; that no video recording or photographs of the alleged recovery proceedings as well as arrest were taken by the police officials; that the present applicant / accused is behind the bar since his arrest, hence his custody is no more required for further investigation. In these circumstances, learned counsel argues that the present applicant/accused's case squarely calls for further inquiry and that he is entitled to the concession of bail.

3. Conversely, learned D.P.G. for the State has flatly opposed the grant of bail to the applicant/accused, contending that the applicant/accused was arrested on the spot with the recovery of a contraband substance and that offences of such nature have adversely affected society at large.

4. Heard and perused the record.

5. The record reflects that the alleged recovery was effected at a public road, yet no independent person was associated as mashir. While the statutory scheme of the Sindh CNS Act, 2024 excludes certain procedural requirements of the Code, it does not dispense with the broader judicial expectation that where independent witnesses are naturally available, their non-association must be explained. The omission of a natural safeguard at the time of recovery creates doubt at the bail stage, particularly where the entire case rests upon police officials alone.

6. The contention regarding the complainant's competency also raises a legal question. Section 17(1) of the Act requires that the authorised officer be no lower in rank than a Sub-Inspector unless duly empowered. The complainant in the present case is ASI Niaz Ali Sahito. Whether he was authorised within the statutory definition of "Authorised Officer" cannot be conclusively determined at this stage. The apparent deviation from the statutory requirement supports the tentative assessment favouring further inquiry.

7. The prosecution has relied on a video recording of the arrest and recovery. However, the evidentiary value of the recording, its continuity, its safe custody, and its forensic verification remain to be established. The mere existence of a video does not dispel doubts unless its authenticity and chain of custody are demonstrated. At the bail stage, such material cannot be treated as conclusive.

8. The recovered quantity is 600 grams of charas. Section 9(1)(3)(B) of the Act prescribes punishment that may extend to nine years but shall not be less than five years. The Supreme Court has repeatedly held that where a statute provides two punishments, one lesser and one greater, the lesser punishment is to be considered at the bail stage for determining whether the case falls within the prohibitory clause. Applying this settled principle, the lesser punishment of nine years is to be considered at this stage. The offence, therefore, does not automatically bar the grant of bail if the case otherwise presents circumstances for further inquiry.

9. In the present case, the cumulative effect of the non-association of independent mashirs at a public place, the question of the complainant's competency under section 17(1), the tentative nature of the video evidence, and the statutory principle that the lesser punishment is to be considered at the bail stage collectively bring the matter within the ambit of further inquiry as envisaged under section 497(2) Cr.P.C. No material has been placed on record to suggest that the applicant is a previous convict, a habitual offender, or likely to abscond or tamper with the prosecution evidence. The applicant is confined in judicial custody and is no longer required for further investigation.

10. In these circumstances, we tentatively hold that the applicant has made out a case for the grant of bail. Accordingly, the applicant, Habibullah s/o Wale Dino, is admitted to post-arrest bail, subject to furnishing solvent surety in the

sum of Rs.50,000/- (Rupees Fifty Thousand only) and a P.R. bond in the like amount, to the satisfaction of the trial Court.

11. The observations made herein are purely tentative and shall not prejudice either party's case at trial.

12. Above are the reasons for our short Order dated 07.07.2026.

**JUDGE**

**JUDGE**

Faisal Mumtaz/PS