

HIGH COURT OF SINDH, BENCH AT SUKKUR

Present:

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

Cr. Bail Application No.D-163 of 2026

Applicant : Abdul Rauf s/o Ashiq Hussain by caste Bozdar, *Through* Mr. Muhammad Ali Dayo, 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, Abdul Rauf Bozdar, seeks post-arrest bail in Crime No.43 of 2026, registered at Police Station Daharki, under Section 9(1)(3)(c) of the Sindh Control of Narcotic Substances Act, 2024. The allegation is that on 11.03.2026, he was apprehended along with co-accused Amir Ali Bozdar near Dad Leghari link road while allegedly carrying a shopper containing 1400 grams of charas. 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 Ghotki earlier declined the applicant/accused's bail vide order dated 27.04.2026.

2. Learned counsel for the applicant/accused, at the outset, submits that the applicant is innocent and has been falsely implicated in this case by the police; that there is an unexplained delay of about two hours in lodging the FIR, given that the distance between the PS and the place of occurrence is about two kilometres; 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 the arrest, were taken by the police officials; and that the present applicant/accused has been behind the bar since his arrest, hence his custody is no longer 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, the 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 after the recovery of a contraband substance and that offences of this nature have adversely affected society at large.

4. Heard and perused the record.

5. The record reflects that the alleged recovery was effected on 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 on police officials alone.

6. The prosecution has relied on a video recording of the arrest and recovery. However, the recording's evidentiary value, continuity, safe custody, and 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.

7. The recovered quantity is 1400 grams of charas. Section 9(1)(3)(c) of the Act prescribes a punishment that may extend to fourteen years but shall not be less than nine 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 to determine 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.

8. In the present case, the cumulative effect of the non-association of independent mashirs at a public place, 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 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 in judicial custody and is no longer required for further investigation.

9. In these circumstances, we tentatively hold that the applicant has made out a case for the grant of bail. Accordingly, the applicant, Abdul Rauf s/o Ashiq Hussain, is admitted to post-arrest bail, subject to furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand only) and a P.R. bond in the like amount, to the satisfaction of the trial Court.

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

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

JUDGE

JUDGE