

# IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail App. No. D – 131 of 2026

(Abdul Jabbar Wagan versus The State)

Before:

**Mr. Zulfiqar Ali Sangi, J.**

**Mr. Arbab Ali Hakro, J.**

Date of hearing : **23.07.2026**

Date of decision : **23.07.2026**

Mr. Deedar Ali Chohan, Advocate for applicant.

Syed Sardar Ali Shah, Additional Prosecutor General.

## **ORDER**

**Arbab Ali Hakro, J.** – Through the instant criminal bail application, applicant / accused, namely Abdul Jabbar son of Bhale Dino Wagan, seeks post-arrest bail in Crime No.49 of 2026 registered at Police Station Darya Khan Marri, District Naushahro Feroze, for offence punishable under Section 9(1), Sr. No.3(c) of the Sindh Control of Narcotic Substances Act, 2024, as amended by the Sindh Control of Narcotic Substances (Amendment) Act, 2025 (**‘the Act’**).

2. Brief facts of the prosecution case, as reflected from the FIR, are that on 22.04.2026, complainant ASI Imdad Hussain of Police Station Darya Khan Marri along with subordinate police officials allegedly left the police station for conducting raid against drug sellers. It is alleged that when the police party reached near an old bridge on the link road leading towards Darya Khan Marri, they saw two persons allegedly selling charas and wine. On seeing the police party, one of them namely Abdul Jabbar son of Bhale Dino Wagan (*present applicant*) allegedly stood up and attempted to run away. The police officials apprehended him, whereas the other accused allegedly escaped. It is alleged that from the possession of applicant, two pieces of charas weighing 1050 grams and three cartons containing wine were recovered. It is further alleged that 50 grams of charas were separated as samples from both pieces and the remaining substance was sealed separately. Thereafter, recovery proceedings were prepared and the present FIR was registered against the applicant on behalf of the State.

3. Learned Counsel for the applicant argued that the applicant is innocent and has falsely been implicated in the present case due to political rivalry. He submitted that the applicant had refused to support a political figure during General Elections 2024, due to which he was allegedly threatened and subsequently involved in a false case. Learned Counsel contended that the prosecution story is doubtful as the alleged recovery was shown to have been effected from a public place, yet no private person was associated as *mashir* despite availability. He further argued that the FIR itself reflects that the accused persons were allegedly selling narcotics openly on a thickly populated road, however, no purchaser or independent witness was produced by the prosecution. Learned Counsel further submitted that there is violation of mandatory provisions of Section 17(2) of the Act, as neither video recording nor photographs of the alleged raid, recovery and arrest were prepared. He contended that the requirement of modern devices was introduced as a safeguard against false implication. He further argued that the complainant being an ASI was not competent to conduct arrest, search and recovery proceedings under Section 17(1) of the Act. It was further argued that although 1050 grams charas was allegedly recovered in two pieces, only 50 grams were separated as sample and the record does not establish proper sampling procedure from the entire recovered substance. Lastly, he submitted that the applicant is in jail since his arrest, is no more required for investigation and is entitled to the concession of bail.

4. Conversely, learned Additional P.G. opposed the bail application and submitted that the applicant was apprehended with a commercial quantity of narcotic substance. He argued that the recovery proceedings are supported by prosecution witnesses, samples were separated and sent to the chemical examiner, and the report confirmed the recovered substance to be charas. According to him, the offence falls within the prohibitory clause of Section 497, Cr.P.C., therefore, the applicant is not entitled to bail.

5. We have heard learned Counsel for the parties and carefully examined the available record.

6. The record reveals that the applicant is alleged to have been arrested on 22.04.2026 at about 07:30 p.m. near old bridge, link road leading towards Darya Khan Marri and recovery of 1050 grams charas consisting of two

pieces has been attributed to him. The alleged recovery was effected by police officials themselves, who are admittedly subordinate staff of the complainant. Although evidence of police officials cannot be discarded merely on account of their official status, however, where recovery is alleged to have taken place at a public place and no independent person has been associated despite availability, such circumstance requires careful examination at the stage of bail.

7. It is also significant that according to the prosecution version, the accused persons were allegedly selling charas and wine openly on a public road situated near a populated area. However, no purchaser, private person or any independent witness has been associated with the recovery proceedings. The absence of independent corroboration in the peculiar facts of the case creates a circumstance requiring further inquiry regarding the manner of alleged recovery.

8. The question regarding compliance of Section 17(2) of the Sindh Control of Narcotic Substances Act, 2024 also requires consideration. The said provision requires video recording of raids, seizures, inspections and arrests conducted under the Act. The purpose behind incorporation of such provision is to ensure transparency and to provide confidence regarding the genuineness of recovery proceedings. The Hon'ble Supreme Court of Pakistan in the cases of Zahid Sarfraz Gill v. The State (2024 SCMR 934) and Muhammad Abid Hussain v. The State (2025 SCMR 721) has emphasized the significance of modern devices and visual evidence in narcotics cases, observing that such material strengthens the prosecution case and provides assurance regarding the legality of recovery proceedings. In the present case, admittedly, no video recording or photographic evidence of the alleged raid, recovery or arrest has been produced by the prosecution. Though such omission may not by itself be sufficient for acquittal, however, at the bail stage, coupled with other circumstances available on record, it becomes a relevant factor while determining whether the case requires further inquiry.

9. The record further reflects that the alleged recovery consisted of two pieces of charas weighing 1050 grams. The prosecution claims that 25 grams were separated from each piece, making a total sample of 50 grams.

However, the available record does not demonstrate the manner in which the representative samples were drawn and whether the sampling procedure sufficiently represented the entire recovered substance. Such aspect relates to safe sampling, preservation and chain of custody of the alleged narcotic substance, which requires determination during trial.

10. So far as the contention regarding competency of the complainant is concerned, the complainant admittedly was an ASI. The provisions of Section 17(1) of the Act provide a mechanism regarding authorized officers for search, seizure and arrest. Whether the complainant was competent and duly authorized to conduct the alleged proceedings is a question requiring deeper examination during trial and cannot be conclusively determined at this tentative stage.

11. It is settled principle of law that even where an offence falls within the prohibitory clause of Section 497 Cr.P.C., bail can be granted if the case of the accused falls within the ambit of further inquiry as contemplated under Section 497(2), Cr.P.C. The Court at the bail stage is not required to conduct a detailed appreciation of evidence but only to determine whether reasonable grounds exist requiring further examination.

12. In the present case, the circumstances including non-association of independent witnesses despite alleged recovery from a public place, absence of video recording as required under Section 17(2) of the Act, questions regarding sampling procedure, and the disputed manner of arrest and recovery collectively create reasonable doubt requiring further inquiry. The plea of the applicant regarding false implication due to political rivalry also requires consideration during trial.

13. It is also relevant that the applicant is in custody since his arrest and investigation has already been completed. There is nothing available on record suggesting that the applicant, if released on bail, would abscond or misuse the concession of bail. It is well settled that bail cannot be withheld as a punishment and every accused is presumed innocent unless proved guilty through due process of law.

14. For the foregoing reasons, we are of the tentative opinion that the applicant has succeeded in bringing his case within the ambit of further

inquiry as envisaged under Section 497(2), Cr.P.C. Consequently, the instant criminal bail application is **allowed** and applicant / accused, namely Abdul Jabbar son of Bhale Dino Wagan, is **admitted to post-arrest bail** subject to 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.

15. The observations made hereinabove are purely tentative in nature and shall not prejudice either party during the course of trial.

The bail application stands **disposed of** in the above terms.

J U D G E

J U D G E

Abdul Basit