

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail App. No. D – 169 of 2026

(Muhammad Rafique Rajper 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**

Syed Hajjan Shah, Advocate for applicant.

Syed Sardar Ali Shah Rizvi, Additional Prosecutor General.

ORDER

Arbab Ali Hakro, J. – Applicant / accused Muhammad Rafique has approached this Court through the instant application under Section 497 Cr.P.C. seeking post-arrest bail in Crime No.156/2026 registered at Police Station Moro, District Naushahro Feroze, for an offence punishable under Section 9(1), Sr.No.3(b) of the Sindh Control of Narcotic Substances Act, 2024, as amended by the Sindh Control of Narcotic Substances (Amendment) Act, 2025 (**‘the Act’**) after his post-arrest bail application was declined by the learned Sessions Judge / Special Judge (CNS), Naushahro Feroze.

2. Briefly, the prosecution alleges that on 13.04.2026, complainant ASI Niaz Ali, along with subordinate police officials, was conducting patrol duty and allegedly apprehended the applicant near Lahooti Chowk, Moro. It is alleged that upon personal search of the applicant, 550 grams of charas was recovered from the right pocket of his shirt. The recovery proceedings were conducted through police *mashirs* and thereafter the accused and recovered property were brought to the police station, where the present FIR was registered.

3. Learned Counsel for the applicant has contended that the applicant has been falsely implicated and the alleged recovery is doubtful. It is argued that no private person was associated as *mashir* despite the place of

occurrence being a populated locality. Learned Counsel has further emphasized that the FIR was registered by an ASI and the mandatory requirements of Section 17 of the Act were not complied with. It has been argued that neither any video recording nor photographs of the alleged search, recovery and arrest were produced, despite the statutory requirement. It is also contended that only 50 grams of alleged charas was sent for chemical examination, whereas the remaining quantity was not subjected to such examination.

4. Learned Additional P.G. opposed the bail application on the ground that 550 grams of charas was allegedly recovered from the applicant, which attracts the relevant penal provision, and that the recovery has been supported by police witnesses. According to learned Additional P.G., minor procedural objections cannot be considered sufficient for grant of bail.

5. Heard the learned Counsel for the parties and examined the available record.

6. At the outset, it may be observed that at the bail stage this Court is not required to record a final determination regarding guilt or innocence of the accused. The tentative assessment is only confined to examining whether reasonable grounds exist for believing that the accused may have committed the alleged offence or whether the case falls within the scope of further inquiry as contemplated under Section 497(2), Cr.P.C.

7. In the present case, the alleged recovery rests exclusively upon the testimony of police officials. There can be no cavil with the proposition that official witnesses are not to be discarded merely because of their official status. However, where the statute itself prescribes procedural safeguards intended to lend transparency and credibility to the search and recovery proceedings, non-observance of such safeguards assumes significance while tentatively assessing the prosecution case.

8. Section 17 of the Act provides procedural safeguards regarding search, seizure and arrest. Sub-section (2) requires video recording of raids,

seizures, inspections and arrests conducted under the Act. The purpose behind such requirement is to bring transparency in narcotics proceedings and to prevent allegations of false implication or planting of narcotics. The Hon'ble Supreme Court has emphasized that such safeguards are intended to ensure fairness and confidence in the recovery process. Reliance is placed upon the cases of Zahid Sarfraz Gill v. The State (2024 SCMR 934) and Muhammad Abid Hussain v. The State (2025 SCMR 721).

9. In the instant case, prima facie, no video recording or photographic evidence of the alleged recovery and arrest has been brought on record. The FIR also does not reflect that any such recording was made. The prosecution has, therefore, not demonstrated compliance with the safeguard contained in Section 17(2) of the Act. At the stage of bail, this omission cannot be treated as a mere insignificant irregularity, particularly when the entire recovery is dependent upon official witnesses.

10. Another circumstance requiring consideration is that out of the alleged recovery of 550 grams, only 50 grams was separated and forwarded for chemical examination. Whether the sampling procedure was properly followed, whether the sample truly represented the entire alleged recovery and what evidentiary value attaches thereto are matters which would require appreciation during trial. At this tentative stage, this circumstance also contributes towards bringing the matter within the ambit of further inquiry.

11. The objection regarding registration of FIR by ASI and alleged violation of Section 17(1) also requires consideration; however, this Court does not deem it appropriate to finally adjudicate the said issue at the bail stage, as the same would require examination of the relevant authorization and evidence during trial.

12. Viewed from the above perspective, particularly the prima facie non-compliance with the statutory safeguard contained in Section 17(2) of the Act, the issue relating to sampling of the alleged contraband and the questions requiring evidence during trial, this Court is persuaded to hold that

the applicant has succeeded in making out a case of further inquiry within the meaning of Section 497(2), Cr.P.C.

13. Consequently, the instant criminal bail application is **allowed**. Applicant Muhammad Rafique son of Azizullah Rajper shall be **released on post-arrest bail**, subject to furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand only) and P.R. bond in the like amount to the satisfaction of the learned trial Court.

14. Needless to observe that the above observations are tentative in nature and shall not prejudice either party during the course of trial.

The instant bail application is **disposed of** accordingly.

J U D G E

J U D G E

Abdul Basit