

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail App. No. D – 173 of 2026

(Rizwan Ali Arain 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. Ghulam Ali Bozdar, Advocate for applicant.

Syed Sardar Ali Shah Rizvi, Additional Prosecutor General.

ORDER

Arbab Ali Hakro, J. – Through the instant application under Section 497, Cr.P.C., applicant Rizwan Ali S/o Ilam Din Arain seeks post-arrest bail in Crime No.83/2026 registered at Police Station Mehrabpur, 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 dismissal of his bail application by the learned Sessions Judge (Competent Court of CNS), Naushahro Feroze.

2. The prosecution case, briefly stated, is that on 19.05.2026 complainant ASI Gul Bahar Jatui, along with subordinate police officials, while conducting patrol duty within the jurisdiction of Police Station Mehrabpur, allegedly apprehended the applicant near Cheema Town. During his personal search, conducted in the presence of police *mashirs*, one black shopping bag allegedly containing 650 grams of charas, one keypad mobile phone and Rs.500/- were recovered. Thereafter, the applicant and recovered articles were brought to the police station and the present FIR was registered.

3. Learned Counsel for the applicant contended that the applicant has been falsely implicated and the alleged recovery is doubtful. It was argued that no private person was associated despite the alleged recovery having been effected from a populated locality. Learned Counsel further submitted that the mandatory requirement of Section 17(2) of the Act regarding video

recording of search, recovery and arrest proceedings was not complied with. It was also contended that the alleged offence carries maximum punishment of nine years and does not fall within the prohibitory clause of Section 497, Cr.P.C.

4. Learned Additional P.G. opposed the application on the ground that the recovery of narcotics from the applicant is supported by police witnesses and the objections raised by the defence relate to matters requiring determination during trial.

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

6. The alleged offence under Section 9(1), Sr. No.3(b) of the Act carries a maximum punishment of nine years' imprisonment. It is a settled principle that, for the purpose of bail, the lesser punishment prescribed by law is to be considered, which in this case is five years' imprisonment, while determining whether the case falls within the prohibitory clause of Section 497, Cr.P.C. Since the alleged offence does not fall within the said clause, refusal of bail requires exceptional circumstances justifying continued detention of the accused.

7. At the stage of post-arrest bail, the Court is required to make only a tentative assessment of the available material and is not expected to determine the guilt or innocence of the accused. The present matter, therefore, requires examination as to whether the prosecution case, at this stage, is free from doubt or calls for further inquiry.

8. The alleged recovery is based solely upon the statements of police officials. Though official witnesses cannot be discarded merely because of their official status, the statutory safeguards prescribed under the Act assume importance. Section 17(2) of the Act requires video recording of search, seizure and arrest proceedings. In the present case, neither the FIR nor the available record reflects that any video recording or photographic evidence of the alleged proceedings was prepared. Such omission, at this tentative stage, cannot be treated as insignificant. The Hon'ble Supreme Court has emphasized the importance of compliance with such safeguards in

Zahid Sarfraz Gill v. The State (2024 SCMR 934) and Muhammad Abid Hussain v. The State (2025 SCMR 721).

9. Another circumstance requiring consideration is that, despite the alleged recovery from Cheema Town, no independent person was associated with the proceedings. Whether such omission is satisfactorily explained is a matter for trial; however, along with other circumstances, it contributes towards requiring further probe into the prosecution case.

10. The CRO report has also been examined. It reflects only one other case against the applicant, i.e. Crime No.81/2026 registered at Police Station Mehrabpur under Section 3 of the Prohibition (Enforcement of Hadd) Order, 1979. The said case is still pending and the challan has not yet been completed. Mere pendency of another criminal case, without conviction, cannot by itself be treated as a sufficient ground to deny bail.

11. Considering the nature of punishment, the tentative questions regarding compliance with Section 17(2) of the Act, absence of independent *mashirs*, and the fact that the only case reflected in the CRO report is pending, this Court is of the view that the applicant has succeeded in making out a case for further inquiry within the meaning of Section 497(2), Cr.P.C.

12. Consequently, the instant criminal bail application is **allowed**. Applicant / accused Rizwan Ali son of Ilam Din Arain shall be **released on 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.

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

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

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