

THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail App. No. D – 190 of 2026

(*Shahbaz alias Shuiban Kalhoro versus The State*)

Before:

Mr. Zulfiqar Ali Sangi, J.

Mr. Arbab Ali Hakro, J.

Date of hearing : **30.07.2026**

Date of decision : **30.07.2026**

Mr. Faiz Muhammad Brohi, Advocate for applicant.

Mr. Muhammad Raza Katohar, Deputy Prosecutor General.

ORDER

Arbab Ali Hakro, J. – Through this bail application, applicant / accused Shahbaz alias Shuiban S/o Ghulam Server Kalhoro seeks post-arrest bail in Crime No.74 of 2026, registered at Police Station Bhiria City, District Naushahro Feroze, 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’**).

2. The prosecution case, as reflected from the FIR, is that on 13.04.2026 at about 0800 hours, complainant ASI Ali Nawaz Brohi, along with subordinate police staff, while on patrolling duty, allegedly apprehended the applicant at National Highway near Dali Stop. It is alleged that upon his personal search, one black plastic shopper containing charas weighing 500 grams was recovered from his possession. Thereafter, sample weighing 100 grams was separated and sealed at the spot, the remaining property was also sealed and secured, and the present FIR was lodged on behalf of the State.

3. Learned counsel for the applicant contended that the applicant is innocent and has falsely been implicated in the present case. He submitted that the alleged recovery was effected from a public place; however, no independent person was associated as *mashir* despite availability of the public. He further argued that no video recording of the alleged recovery proceedings was prepared as required under Section 17(2) of the Act, thereby rendering the prosecution case doubtful. He also questioned the

competency of the complainant being an ASI in view of Section 17(1) of the Act. It was further contended that the alleged offence does not fall within the prohibitory clause of Section 497, Cr.P.C. and, at the bail stage, the lesser punishment prescribed by law is to be taken into consideration. Learned counsel lastly submitted that the applicant is no longer required for investigation and there is no likelihood of his absconding or tampering with the prosecution evidence.

4. Conversely, learned DPG opposed the grant of bail on the ground that the applicant was apprehended at the spot and charas weighing 500 grams was recovered from his possession. He submitted that sufficient material is available connecting the applicant with the commission of the offence and, therefore, he is not entitled to the concession of bail.

5. Heard the learned counsel for the parties and perused the available record.

6. The record reflects that the alleged recovery was effected from a public place during daytime; however, admittedly no independent person was associated as *mashir*. Although the prosecution has relied upon police officials as witnesses of the recovery, yet, at the bail stage, the absence of independent corroboration in a case of recovery from a public place is a circumstance which requires due consideration, particularly when the entire prosecution case rests upon official witnesses alone.

7. The contention regarding the competency of the complainant also requires consideration. Section 17(1) of the Act contemplates proceedings by an authorized officer. Whether the complainant ASI Ali Nawaz Brohi was duly authorized within the meaning of the said provision is a question requiring evidence and is to be determined during trial. Likewise, the contention regarding non-preparation of video recording in terms of Section 17(2) of the Act also cannot be ignored at this tentative stage and is a circumstance which requires examination during trial.

8. The alleged recovery from the applicant is 500 grams of charas. Section 9(1), Sr. No.3(b) of the Sindh Control of Narcotic Substances Act, 2024 provides punishment which may extend to nine years but shall not be less than five years. It is a settled principle that where the statute prescribes

two punishments, the lesser punishment is to be considered at the bail stage. Even otherwise, keeping in view the punishment prescribed under the said provision, the alleged offence does not fall within the prohibitory clause of Section 497(1), Cr.P.C.

9. It is also worth mentioning that the alleged recovered quantity is 500 grams of charas, which is a borderline quantity under the relevant Schedule of the Act. Admittedly, quantity up to 499 grams falls within the lower category, whereas the alleged recovery of the applicant has been shown as 500 grams, placing the case at the threshold of the higher category. At the bail stage, where a difference of only one gram changes the statutory classification and legal consequences, the prosecution is required to establish through unimpeachable evidence that the exact recovered quantity was correctly weighed and maintained throughout the proceedings. This aspect, coupled with the other circumstances available on record, also calls for further inquiry within the meaning of Section 497(2), Cr.P.C.

10. The cumulative effect of the non-association of independent *mashirs* at a public place, the question regarding competency of the complainant, the absence of video recording as contemplated under Section 17(2) of the Act, the borderline nature of the alleged recovered quantity and the applicability of the principle regarding lesser punishment collectively brings the case within the ambit of further inquiry as envisaged under Section 497(2), Cr.P.C.

11. So far as the criminal record of the applicant is concerned, the learned DPG claims that the CRO reflects registration of one other criminal case against the applicant. However, admittedly, the said case is not under the Act. Mere registration of another criminal case, not relating to narcotics, by itself is not sufficient to disentitle the applicant from the concession of bail in the present matter.

12. The applicant is behind bars and the Investigating Officer has already completed the substantial part of investigation. The applicant is no longer required for further investigation and there is no material available on record to suggest that he is likely to abscond or tamper with the prosecution evidence.

13. In view of the above discussion, we are of the tentative view that the applicant has succeeded in making out a case for further inquiry within the meaning of Section 497(2), Cr.P.C. Consequently, instant bail application is **allowed** and the applicant is **admitted to post-arrest bail**, subject to furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty thousand only) with PR bond in the like amount to the satisfaction of the learned trial Court.

14. The observations made hereinabove are purely tentative in nature and shall not prejudice either party during trial.

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

J U D G E

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Abdul Basit