

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Bail Application No.D-214 of 2026

Present:

Justice Muhammad Faisal Kamal Alam
Justice Tasneem Sultana

Applicant : Muhammad Ismail Sahito through Mr.
Ghulam Murtaza Sahito, Advocate.

The State : Through Syed Sardar Ali Shah Rizvi,
Additional Prosecutor General.

Date of Hearing : **08-09-2026**

Date of Order : **08-09-2026**

O R D E R

TASNEEM SULTANA, J.- Through this criminal bail application, the applicant, Muhammad Ismail Sahito, seeks post-arrest bail in Crime No.234 of 2026, registered under Section 9(1)(3)(c) of the Sindh Control of Narcotic Substances Act, 2024 (SCNSA) at Police Station, Moro Sukkur, after his post-arrest bail application was declined by the learned Sessions Judge (Competent Court), SCNSA, Naushahro Feroze, vide order dated 23.06.2026.

2. The detailed facts of the case are already set out in the bail application and the FIR and, therefore, need not be reproduced here.

3. Learned counsel for the applicant contends that the applicant is innocent and has been falsely implicated in the present case; that the alleged recovery of 1100 grams of charas has been foisted upon him; that no private person was associated as mashir despite the place of recovery being a populated area; that the arrest and recovery proceedings were not videographed and that the requirements of Section 17 of the Sindh Control of Narcotic Substances Act, 2024 were not complied with. He further contended that these circumstances bring the case within the ambit of further inquiry under Section 497(2), Cr.P.C. and prays for grant of post-arrest bail. To support his contentions, learned counsel relied upon the cases of Muhammad Abid Hussain versus The State and another (2025 SCMR 721).

4. Conversely, learned Additional Prosecutor General for the State opposes the application and contends that the applicant was apprehended at the spot and 1100 grams of charas was allegedly recovered from his possession; that the recovered substance was sent to the Chemical Examiner and tested positive for charas; that the offence carries punishment extending to fourteen years and, therefore, falls within the prohibitory clause of Section 497(1), Cr.P.C. He further submits that the charge has been framed and the matter is now fixed on 15.09.2026 for recording evidence of the prosecution witnesses. He, therefore, prays for dismissal of the bail application.

5. Heard. Record perused.

6. It appears from the record that the applicant was apprehended during routine patrolling and 1100 grams of charas was allegedly recovered from his possession. The representative sample drawn from the recovered substance was forwarded to the Chemical Examiner and tested positive for charas. The quantity so recovered attracts Section 9(1)(3)(c) of the Sindh Control of Narcotic Substances Act, 2024, which is punishable with imprisonment that may extend to fourteen years but shall not be less than nine years, along with a fine up to five hundred thousand rupees, but not less than one hundred thousand rupees. In the case of Jabran and another versus The State through Director General FIA and others (2025 SCMR 1099), the Honourable Supreme Court of Pakistan has discussed the question of imposition of maximum sentence. The relevant portion is reproduced as under: -

“6. We have gone through the referred judgements and have not been persuaded by the argument of the learned counsel that the minimum period of sentence is to be considered at bail stage for the purpose of section 497(1) Cr.P.C. Such interpretation is not supported by any law or subsequent jurisprudence established by this Court. At bail stage, the Court is not to undertake any speculative exercise or guess work regarding the probable length of sentence that will likely be awarded at the end of a trial. Doing so would amount to a deeper appreciation of evidence, which is prohibited at bail stage. Additionally, any such attempted categorization of sentencing or speculation at bail stage could prejudice future proceedings by pre-empting the mind of the Trial Court.”

In another case of Muhammad Aslam versus The State (2023 SCMR 2056), the Honourable Supreme Court of Pakistan has observed as under:-

“The offence is heinous in nature as it contributes to the menace of drugs having grave repercussions on the society. Prima facie the material available on the record connects the petitioner with the commission of the crime. The offence falls within the prohibitory clause of section 497, Cr.P.C. The impugned order is well reasoned, proceeds on correct principles of law on the subject and does not call for interference by this Court.”

In view of the above dictum, the maximum punishment prescribed for the alleged offence attracts the prohibitory clause of Section 497(1), Cr.P.C.

7. Learned counsel has mainly stressed that no private mashir was associated and that the proceedings relating to the alleged recovery and arrest were not documented through video or photographs and has relied upon Muhammad Abid Hussain. In the said case of the Honourable Supreme Court of Pakistan observed as under: -

“6. In the present case neither any video in the shape of recording and photographs of the alleged recovery has been collected by the police nor any private witness from the locality was associated to prove the alleged recovery from the possession of the petitioner. As stated above, the use of modern devices during recoveries is not merely a procedural formality but a crucial safeguard to protect innocent persons from potential police atrocities. It provides an objective and unbiased account of the recovery process, reducing the risk of false implications and ensuring that the rights of the accused are protected. In the cases of stringent punishments, the prosecution must present clear, cogent and reliable evidence to prove the accused's guilt beyond a reasonable doubt. In the absence of video evidence and independent witnesses, the prosecution's case relies heavily on the testimony of the police officers involved in the raid, which is insufficient to meet the required standard of proof.”

The Honourable Supreme Court further observed as under: -

“7. We strongly recognize the need to combat the menace of narcotics; however, it must also be ensured that the rights of the accused are protected. The failure to record the recovery on video, non-association of private witnesses and failure to adhere clear judicial directives, tilts the balance in favour of the petitioner.”

8. There can be no dispute with the principle emphasized by the Honourable Supreme Court regarding the importance of modern devices in narcotics cases. However, the observations in *Muhammad Abid Hussain* (supra) are to be appreciated in the context of the cumulative circumstances considered therein. In the present case, the applicant is alleged to have been apprehended during patrolling at Al-Madina Petrol Pump NHW, and the contraband was allegedly recovered from his possession. Section 103, Cr.P.C. stands excluded from searches and arrests made under the narcotics law and, therefore, non-association of a private mashir does not, by itself, render the alleged recovery doubtful. Section 17 of the Sindh Control of Narcotic Substances Act, 2024 deals with entry, search, seizure and arrest without warrant in the circumstances contemplated therein, whereas seizure and arrest in a public place are separately dealt with under Section 18 of the Act. In these circumstances, the absence of videography and the competency of the ASI to register the FIR under the SCNSA cannot be regarded as sufficient to displace the other material available on record or to bring the case within the ambit of further inquiry. Their evidentiary effect, along with the remaining evidence, shall be assessed by the learned trial Court in accordance with law.

9. In view of the above facts and circumstances, the applicant has failed to make out a case for grant of post-arrest bail. Consequently, this Criminal Bail Application is **dismissed**. However, the trial Court is directed to expedite the trial and conclude the case within a period of two months as the charge has already been framed and the Investigating Officer so also the learned Additional PG to ensure that prosecution witnesses are present before the trial Court on the next date of hearing. No adjournment will be allowed except in exceptional circumstances.

10. Needless to observe that the observations made herein are tentative in nature and shall not influence the learned trial Court, which shall decide the case independently based on the evidence adduced before it.

J U D G E

J U D G E