

ORDER SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT MIRPURKHAS

Crl. Bail Application No. S-448 of 2026

Applicant : Dileep Kumar @ Dileep through Mr. Tulsi Das Khatri, Advocate.

Respondent : The State through Mr. Neel Parkash, Deputy Prosecutor General Sindh.

Date of Hearing : 07.09.2026

Date of Order : 07.09.2026

ORDER

Muhammad Humayon Khan, J.: This is a pre-arrest bail application under Section 498 Cr.P.C seeking enlargement of the Applicant on bail in Crime No.33 of 2026 lodged at P.S Soofi Faqeer for offence under Sections 3/4 of PEHO. The applicant had originally sought pre-arrest bail before the learned Sessions Judge, Umerkot, which was declined vide order dated 12.08.2026, whereafter he filed the present application before this Court.

2. The precise allegation against the applicant may be stated as follows:

i) that the complainant/ ASI of P.S. Soofi Faqeer, while on patrol along with P.C. Khadim Hussain, P.C Muhammad Rashid and driver D.P.C. Muhammad Umer in official vehicle bearing registration No. SPC-960, reached Korai Water and allegedly received spy information that the applicant/accused Dileep Malhi was present at Soofi Shakh, Dhoronaro Main Road, carrying a yellow sack;

ii) that acting upon such information, the police party proceeded towards the pointed place, where they allegedly saw a Mehran car proceeding towards Dhoronaro and the applicant, who, upon seeing the police party, allegedly ran towards the forest;

iii) that the police chased the applicant, but he allegedly succeeded in escaping while leaving behind the yellow sack at the place of incident; and

iv) that the police took the said sack into possession and, upon search, allegedly recovered 12 pints of white whisky and 12 pints of red whisky, making a total of 24 pints of whisky. Due to the alleged non-availability of private persons, police officials were appointed as mashirs. One pint was sealed for chemical analysis, while the remaining property was sealed separately, whereafter a mashirnama of recovery was prepared and the present case was registered.

3. Learned counsel for the applicant has contended that the alleged property has been foisted upon the applicant due to mala fide intention and ulterior motives; that the applicant is innocent and has no previous criminal record; that no independent or private mashir was associated in the alleged recovery proceedings; that nothing incriminating was recovered from the personal possession of the applicant; and that the alleged offence does not fall within the ambit of the prohibitory clause of Section 497 Cr.P.C. Lastly, he prayed for confirmation of the interim pre-arrest bail already granted to the applicant.

4. Conversely, learned Deputy Prosecutor General for the State has opposed the grant of bail to the applicant/accused.

5. After hearing learned counsel for the applicant and learned Deputy Prosecutor General for the State, and going through the record, I am inclined to grant bail for the following reasons:

i) The alleged offence does not fall within the prohibitory clause of Section 497(1) Cr.P.C. It is well settled that in offences falling outside the prohibitory clause, grant of bail is a rule and refusal is an exception. Reference may be made to *Muhammad Tanveer v. The State and another* reported as **PLD 2017 SC 733**.

ii) According to the prosecution's own case, the applicant was not apprehended at the place of incident. Rather, it is alleged that he succeeded in escaping towards the forest.

Consequently, no incriminating recovery was effected from the personal possession of the applicant.

iii) The alleged recovery of 24 pints of whisky was made from a yellow sack allegedly left behind at the place of incident. Therefore, the question whether the said sack and its contents were actually in the conscious and exclusive possession of the applicant, and whether the same can safely be connected with him, would require evidence and deeper appreciation at trial.

iv) No independent or private person was associated as mashir of the alleged recovery. According to the prosecution, police officials were appointed as mashirs due to the alleged non-availability of public persons. The evidentiary worth of such recovery proceedings shall therefore be examined by the learned Trial Court after recording evidence and cannot be conclusively determined at this tentative stage.

v) No other incriminating material is shown to have been recovered from the applicant to independently connect him with the alleged offence. The prosecution allegation regarding the ownership and possession of the recovered property therefore remains a matter to be established through evidence at trial.

vi) The investigation has already been completed and the challan has been submitted before the competent Court. The applicant is therefore no longer required for the purpose of investigation.

vii) It is already well settled that where an accused is otherwise entitled to post-arrest bail, the extraordinary relief of pre-arrest bail should not be withheld merely as a procedural formality of first sending him behind bars. In this regard, reference may also be made to *Rana Muhammad Arshad v. Muhammad Rafique and another* reported as **PLD 2009 SC 427**.

viii) In view of the foregoing circumstances, no useful purpose would be served by sending the applicant into custody merely to enable him subsequently to seek post-arrest bail. The applicant has therefore made out a case for confirmation of the interim pre-arrest bail already granted to him.

4. For these reasons, this application is allowed and the interim pre-arrest bail granted to the applicant vide order dated 18.08.2026 is hereby

confirmed on the same terms and conditions and on the surety already furnished by him. However, in the event that the applicant is found misusing the concession granted by this order, the learned Trial Court shall be at liberty to recall the bail of the applicant and proceed in accordance with law.

5. It is clarified that the observations made above are tentative in nature and shall not prejudice the case on merits, which shall be decided by the learned Trial Court independently on the basis of evidence brought before it.

JUDGE

Faisal