

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

**Criminal Bail Application No.D-98 of 2026**

***PRESENT***

***Mr. Justice Jawad Akbar Sarwana.***

***Mr. Justice Syed Fiaz ul Hassan Shah.***

Applicant: Syed Ali Abbas son of Syed Mubashir-ul-Hasnain,  
Through Mr. Tariq Ali Narai, Advocate.

Respondent: The State  
Through Mr. Khalid Hussain Lakho, D.P.G.

Date of hearing: 05.05.2026

Date of decision: 20.05.2026

**ORDER**

**Syed Fiaz ul Hassan Shah, J:** The applicant booked in Crime No. 121 of 2025 registered at P.S. Rahoki, Hyderabad on the allegation that police party headed by SIP Ghulam Mustafa during patrolling on 24.12.2025 at Mango Garden of Bashir Ahmed Chandio, Hyderabad on suspicion stopped applicant/accused and allegedly recovered three pieces of contraband charas total weighing 1412 grams from the possession of applicant/accused.

2. It is inter-alia contended by the counsel for applicant that applicant/accused is innocent and has falsely been involved in this case; that the applicant is a first-time offender; he further pointed out procedural lapses, specifically that the recovered contraband was sent for chemical examination after a much delay; that applicant was arrested since 24.12.2025 and since then the case has not been proceeded and he is facing incarceration without any fruitful development in the case; that no independent witness was arranged at the time of alleged recovery of the narcotic thereby section 103 was violated; that challan has been submitted before the Trial Court, the applicant is no more required for investigation and there is no apprehension that the applicant is attempting to temper or destroy the prosecution's evidence.

3. On the other hand, the learned DPG for the State opposed the bail application on the grounds that the applicant was nominated in the FIR with specific role and was

arrested on the spot in possession of narcotics; therefore, at this stage, he is not entitled to the concession of bail. He argued that offence carries a punishment ranging from 9 to 14 years. Citing a recent unreported judgment of the Hon'ble Supreme Court (**Criminal Petition No. 150-K/2024**), he maintained that when considering a bail application, only the maximum statutory punishment should be considered. Thus, while the lesser punishment may fall under the non-prohibitory clause, the maximum punishment brings the case within the prohibitory clause.

4. We have heard the learned counsel for the parties and perused the record.

5. After carefully considering the arguments advanced by both sides and examining the material available on record, it emerges that, according to the prosecution, 1412 grams of charas were allegedly recovered from the applicant in a mango orchard during daylight hours. This circumstance itself appears unusual, as no explanation has been offered as to how police officials, while on routine patrol, entered private agricultural land belonging to farmers. The record is silent on any plausible justification for the police presence in a private mango garden. The FIR merely states that the police were on patrolling duty, without reference to prior intelligence or spy information that could have led them directly to this property. It is difficult for a prudent mind to accept why the applicant alone was singled out as a suspicious person in that setting, particularly when there is no mention of sale, purchase, or transportation of the contraband to any specific place. The prosecution's case is further weakened by the absence of independent witnesses at the time of recovery. The record does not indicate whether the police made any effort to associate private persons as mashirs, or whether any such persons refused to act as mashir. These lapses collectively render the case one of further inquiry.

6. It is a settled principle that bail cannot be withheld as punishment. It is a settled principle of law that any unexplained delay in the transmission of samples to the laboratory makes the prosecution's case doubtful, as held by the Hon'ble Supreme Court in **2019 SCMR 1300 (Amjad Ali v. The State)** and where the prosecution's case hinges solely on police testimony, uncorroborated by independent or natural witnesses, the benefit of doubt must be extended even at the bail stage (*Muhammad Arshad v. The State*, 2022 SCMR 1555). The Hon'ble Supreme Court in *Muhammad Abid Hussain v. The State* (2025 SCMR 721) has further held that lapses in mandatory safeguards concerning search, seizure, safe custody, and transmission of samples strike at the root of the prosecution's case and bring it within the ambit of further inquiry, even where the alleged quantity falls within the prohibitory clause.

7. As emphasized in *Manzoor v. State* (PLD 1972 SC 81), liberty cannot be curtailed without compelling justification. Accordingly, applicant is admitted to post-arrest bail

subject to furnishing solvent surety in a sum of Rs.50,000/- and P.R. bond in the like amount to the satisfaction of the trial Court.

9. Needless to observe that any finding recorded herein-above are tentative in nature for the purpose of deciding this bail application, and the trial Court will not be influenced with it and will try the case in accordance with law.

**J U D G E**

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Ahmed/Pa,