

HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Present:

Mr. Justice Zulfiqar Ali Sangi

Mr. Justice Arbab Ali Hakro,

1st Crl. Bail Application No.D-95 of 2026

Applicant : Bashir Ahmed son of Muhammad Khan by
caste Jafferi, *Through* Mr. Habibullah G.
Ghour, Advocate.

The State : Through Mr. Aitbar Ali Bullo, Deputy Prosecutor
General, Sindh.

Date of hearing : 08.07.2026.

Date of decision : 08.07.2026.

ORDER

ARBAB ALI HAKRO, J:- The applicant Bashir Ahmed seeks post-arrest bail in Crime No.23 of 2026 registered at Police Station Tangwani under section 9(i), 3-C of the Sindh Control of Narcotic Substances Act, 2024 (as amended in 2025). The allegation is that on 13.03.2026, he was apprehended near Manjhi Bridge while allegedly carrying a black shopper containing charas weighing 1090 grams. The mashirnama was prepared by police officials, the property was sealed, and thereafter the FIR was lodged on behalf of the State. The learned Special Judge for CNS, Kashmore, at Kandhkot earlier declined bail vide order dated 02.06.2026.

2. Learned counsel for the applicant has contended that the case is not free from doubt and requires further inquiry. It is urged that the alleged recovery was effected at a busy public road leading to Kandhkot, yet no independent person was associated as mashir. It is further argued that the police party did not record

any video of the arrest or recovery, which is a statutory requirement under section 17(2) of the Sindh CNS Act, 2024. Learned counsel has also pointed out that the applicant was allegedly detained two days prior to the FIR, and that his father had moved an application under sections 22-A and 22-B Cr.P.C, which was disposed of. It is submitted that the entire case is the result of malafide and ulterior motives. Learned counsel has emphasized that the punishment provided under section 9(i), 3-C ranges between nine and fourteen years, and therefore, in view of the settled principle that at the bail stage the lesser punishment is to be considered, the offence does not fall within the prohibitory clause of section 497, Cr.P.C.

3. Conversely, learned DPG has opposed the bail plea on the ground that the recovered quantity attracts section 9(i), 3-C of the Act. It is argued that the police officials are competent witnesses and that the absence of private mashirs is inconsequential in view of the statutory scheme of the Act. It is further submitted that the chemical report supports the prosecution case and that no material has been brought on record to establish malafide.

4. We have considered the submissions and examined the available material. The prosecution alleges that 1090 grams of charas were recovered from the applicant near Manjhi Bridge. The mashirnama was prepared solely by police officials, and the FIR does not mention any video recording of the arrest or recovery. However, the charge-sheet annexed to the bail application shows that a USB containing a video recording was seized and sealed. Whether that recording is continuous, authentic, and duly preserved is a matter for trial. At this stage, the absence of any mention of a video recording in the FIR and mashirnama, coupled with the later appearance of a USB in the charge-sheet, creates an ambiguity that cannot be resolved without a deeper appreciation of the evidence.

5. The Supreme Court in *Muhammad Abid Hussain v. The State* (2025 SCMR 721) has laid down a binding principle that the use of modern devices during recoveries is not merely a procedural formality but a crucial safeguard against potential police excesses and for protecting innocent persons. The Apex Court has held that video recording of recovery proceedings provides an objective, unbiased account, reduces the risk of false implication, and ensures that the rights of the accused are protected. It has further been held that, in cases carrying stringent punishments, the prosecution must present clear, cogent and reliable evidence, and that the absence of video evidence and independent witnesses tilts the balance in favour of the accused at the bail stage. The Supreme Court has also reiterated that ultimate incarceration of a guilty person can repair the wrong caused by a mistaken grant of bail, but no reparation can compensate an innocent person for unjustified incarceration, even if acquitted later.

6. Applying the above principle to the present case, the prosecution's failure to reflect the video recording in the FIR or mashirnama, and the unexplained manner in which the USB appears only in the charge-sheet, create a serious question about compliance with statutory safeguards. The Supreme Court's above view squarely supports the proposition that where mandatory safeguards are doubtful or partially complied with, the case falls within the ambit of further inquiry under section 497(2) Cr.P.C.

7. The plea of prior detention is supported by the fact that the applicant's father had filed an application under sections 22-A and 22-B Cr.P.C. Whether such detention occurred is a matter for evidence, but the existence of such proceedings lends support to the plea of mala fide and cannot be ignored at this tentative stage.

8. The recovered quantity is 1090 grams of charas. Section 9(i), 3-C of the Sindh CNS Act, 2024 prescribes punishment that may extend to fourteen years but shall not be less than nine years. It is a settled principle that where a statute provides two punishments, one lesser and one greater, the lesser punishment is to be considered at the bail stage. Thus, the lesser punishment of nine years is to be considered when determining whether the case falls within the prohibitory clause. On this touchstone, the offence does not automatically bar the grant of bail if the case otherwise presents circumstances for further inquiry.

9. The cumulative effect of (i) the ambiguity surrounding compliance with section 17(2) despite the later-produced USB, (ii) the absence of independent mashirs at a public place, (iii) the plea of prior detention supported by judicial proceedings, and (iv) the statutory doctrine that a lesser punishment is to be considered at the bail stage brings the matter within the ambit of further inquiry envisaged under section 497(2) Cr.P.C. No material has been placed on record to suggest that the applicant is a previous convict, a habitual offender, or likely to abscond or tamper with the prosecution evidence.

10. In these circumstances, we tentatively hold that the applicant has made out a case for the grant of bail. Accordingly, the applicant, Bashir Ahmed, is admitted to post-arrest bail, subject to furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Lac) and a P.R. bond in the like amount, to the satisfaction of the trial Court.

11. The observations made herein are purely tentative and shall not prejudice either party's case at trial.

12. Above are the reasons for our short order dated 08.07.2026.

JUDGE

JUDGE