

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Present:

*Mr. Justice Zulfiqar Ali Sangi,
Mr. Justice Arbab Ali Hakro,*

1st CrI. Bail Application No.D-101 of 2026

Applicant : Ikhtlaque son of Shamshad Ali by caste
Shahani, *Through* Mr. Habibullah G. Ghouri,
Advocate.

The State : *Through* Mr. Nazir Ahmed Bhagnwar, Deputy
Prosecutor General, Sindh.

Date of hearing : 15.07.2026.

Date of decision : 15.07.2026.

ORDER

ARBAB ALI HAKRO, J:- The applicant, Ikhtlaque Shahani, seeks post-arrest bail in Crime No.19 of 2026, registered at Police Station, Mahota, under section 9(1)(3)(c) of the Sindh Control of Narcotic Substances (Amendment Act-2025). The allegation is that on 14.04.2026, he was apprehended from southern side bank of Dadu Canal, allegedly carrying a black plastic shopper containing 1500 grams of charas. The mashirnama was prepared on the spot by police officials, the property was sealed, and thereafter the FIR was lodged on behalf of the State. The learned Special Judge for CNS Larkana earlier declined the applicant/accused's bail vide order dated 11.06.2026.

2. Learned counsel for the applicant/accused, at the outset, submits that all the witnesses are police officials and that nothing was recovered from the applicant/accused's possession; rather, the alleged substance has been foisted upon him by the police to show their efficiency. He further contends that

although the applicant/accused was allegedly arrested in a busy place, not a single private person has been cited as a mashir or eye-witness to the incident. In these circumstances, learned counsel argues that the present applicant/accused's case squarely calls for further inquiry and that he is entitled to the concession of bail.

3. Conversely, learned D.P.G. for the State has flatly opposed the grant of bail to the applicant/accused, contending that the applicant/accused was arrested on the spot with the recovery of a contraband substance and that offences of such nature have adversely affected society at large.

4. Heard and perused the record.

5. The record reflects that the alleged recovery was effected from a busy place, yet no independent person was associated as mashir. While the statutory scheme of the Sindh CNS Act, 2024 excludes certain procedural requirements of the Code, it does not dispense with the broader judicial expectation that where independent witnesses are naturally available, their non-association must be explained. The omission of a natural safeguard at the time of recovery creates doubt at the bail stage, particularly where the entire case rests upon police officials alone.

6. The contention regarding the complainant's competency also raises a legal question. Section 17(1) of the Act requires that the authorized officer be no lower in rank than a Sub-Inspector unless duly empowered. The complainant in the present case is ASI Nazir Ahmed Khokhar. Whether he was authorized within the statutory definition of "Authorized Officer" cannot be conclusively determined at this stage. The apparent deviation from the statutory requirement supports the tentative assessment favouring further inquiry.

7. The prosecution has relied on a video recording of the arrest and recovery. However, the evidentiary value of the recording, its continuity, its safe custody, and its forensic verification remain to be established. The mere existence of a video does not dispel doubts unless its authenticity and chain of custody are demonstrated. At the bail stage, such material cannot be treated as conclusive.

8. The recovered quantity is 1500 grams of charas. Section 9(1)(3)(c) of the Act prescribes punishment that may extend to fourteen years but shall not be less than nine years. The Supreme Court has repeatedly held that where a statute provides two punishments, one lesser and one greater, the lesser punishment is to be considered at the bail stage for determining whether the case falls within the prohibitory clause. Applying this settled principle, the lesser punishment of nine years is to be considered at this stage. The offence, therefore, does not automatically bar the grant of bail if the case otherwise presents circumstances for further inquiry.

9. In the present case, the cumulative effect of the non-association of independent mashirs at a public place, the question of the complainant's competency under section 17(1), the tentative nature of the video evidence, and the statutory principle that the lesser punishment is to be considered at the bail stage collectively bring the matter within the ambit of further inquiry as 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. The applicant is confined in custody and is no longer required for further investigation.

10. In these circumstances, we tentatively hold that the applicant has made out a case for the grant of bail. Accordingly, the applicant, Ikhlaque Shahani, 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.

JUDGE

JUDGE