

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Present:

Mr. Justice Abdul Mobeen Lakho

Mr. Justice Zulfiqar Ali Sangi

Criminal Bail Application No.D-134 of 2026

Applicants: Shakeel Burfat and Sajjad Burfat through Miss. Falak Gul Fatima, Advocate.

Respondent: The State through Ms. Rameshan Oad, Deputy Prosecutor General, Sindh.

Date of hearing: 13.08.2026.

Date of order: 13.08.2026.

O R D E R

ZULFIQAR ALI SANGI, J:- Through the instant Criminal Bail Application, the applicants/accused, namely **Shakeel Burfat and Sajjad Burfat**, seek their admission to post-arrest bail in **Crime No.69 of 2026**, registered at Police Station S.I.T.E. Kotri, District Jamshoro, for an offence punishable under **Section 9(1)3(c) of the Sindh Control of Narcotic Substances Act, 2024**. Their earlier application for bail, being **Bail Application No.352 of 2026**, was dismissed by the learned Sessions Judge/Special Judge (CNS), Jamshoro, vide order dated **08.04.2026**.

2. Briefly stated, the prosecution case is that on **19.02.2026 at about 2330 hours**, a police party of Police Station Kotri, while allegedly on patrol duty, apprehended the applicants near **Ghani Chowk, beside Kati Chowk Mill, S.I.T.E. Kotri**. According to the prosecution, at the time of their apprehension, both applicants were carrying black shoppers. Upon search, a large piece of charas weighing **1050 grams** was allegedly recovered from the shopper carried by accused Shakeel Burfat, whereas another shopper allegedly carried by accused Sajjad Burfat was found to contain slabs of charas weighing **1010 grams**. During their personal searches, an amount of **Rs.300/-** was allegedly recovered from Shakeel Burfat and **Rs.200/-** from Sajjad Burfat. The alleged narcotics were taken into possession in the presence of mashirs, namely **PC Bashir Ahmed Solangi and PC Abdul Hakeem Sahar**, and a mashirnama of arrest and recovery was prepared at the spot. Consequently, the present crime was registered.

3. Learned counsel for the applicants contended that the applicants are innocent and have been falsely implicated in the present case. He submitted that the alleged samples of the recovered narcotic substance were forwarded to the Chemical Examiner after an unexplained delay of **four days**, thereby giving rise to a serious question regarding the safe custody and safe transmission of the case property. He further contended that the alleged place of recovery is situated in a thickly populated locality on a busy road, yet the police officials did not associate any independent/private person as a witness to the alleged recovery, despite the availability of such persons. According to learned counsel, such omission assumes significance in the circumstances of the case and renders the prosecution version open to doubt. Learned counsel further submitted that the prosecution has not alleged that any purchaser was present at the spot, nor did the police party make any effort to ascertain from whom or to whom the applicants were allegedly transporting the narcotic substance. He maintained that no incriminating article was recovered from the personal possession of the applicants and that the alleged recovery has been foisted upon them. It was, therefore, argued that the prosecution material, when tentatively assessed, does not furnish sufficient grounds for believing the applicants to be guilty, and that the case squarely falls within the ambit of **further inquiry contemplated by Section 497(2), Cr.P.C.** Learned counsel accordingly prayed for grant of post-arrest bail.

4. Conversely, learned Deputy Prosecutor General, Sindh, opposed the application and supported the impugned order. She contended that the applicants were apprehended at the spot while carrying black shoppers and that **1050 grams and 1010 grams of charas**, respectively, were recovered from their possession. According to her, the alleged recovery constitutes sufficient incriminating material connecting the applicants with the commission of the offence. She further submitted that the pleas relating to delay in dispatch of the samples, false implication, and the manner of apprehension involve disputed questions of fact, which cannot appropriately be resolved at the bail stage and require recording and appreciation of evidence at trial. She, therefore, prayed for dismissal of the bail application.

5. We have heard learned counsel for the applicants/accused as well as learned Deputy Prosecutor General, Sindh, and have carefully examined the material available on record with their assistance. At the

stage of bail, the Court is required to undertake a **tentative assessment** of the material available on record and is not expected to conduct a deeper appreciation of evidence or undertake a meticulous examination of the merits of the case. The question, therefore, is whether the material presently available on record furnishes reasonable grounds for believing that the applicants are guilty of the alleged offence, or whether the circumstances emerging from the record necessitate further inquiry within the contemplation of **Section 497(2), Cr.P.C.**

6. Prima facie, the prosecution case rests substantially upon the alleged recovery of **1050 grams of charas from Shakeel Burfat and 1010 grams of charas from Sajjad Burfat**. The defence has, however, raised a specific objection regarding the safe custody and safe transmission of the alleged narcotic substance on the ground that the samples were sent to the Chemical Examiner after a delay of four days. At the bail stage, the effect of such delay, including whether the prosecution has satisfactorily accounted for the intervening period and established an unimpeachable chain of custody, cannot be finally determined. Nevertheless, the issue is not wholly irrelevant and, in the circumstances of the present case, requires examination at trial.

7. It is true that the testimony of police officials cannot be discarded merely on the ground that they are official witnesses. At the same time, the applicants have specifically asserted that the alleged place of recovery was a populated locality situated on a busy road and that no private person was associated with the alleged recovery proceedings. The mashirs cited by the prosecution are admittedly police officials. The question whether the prosecution had sufficient justification for not associating any independent witness, despite the alleged availability of members of the public, and whether its explanation in that regard is satisfactory, is ultimately a matter for determination by the learned Trial Court after recording evidence. However, this circumstance, coupled with the other features of the case, is relevant for the purpose of making the tentative assessment required at the bail stage.

8. Another material aspect requiring consideration is that the prosecution has not alleged any specific purchaser or recipient of the narcotic substance at or near the place of apprehension, nor does the available material presently demonstrate any attempt on the part of the applicants to sell the alleged narcotics to any particular person. We are

conscious that proof of a completed sale or identification of a purchaser may not, by itself, be an indispensable ingredient of the offence alleged; nevertheless, the circumstances surrounding the alleged possession and recovery remain matters to be examined on the basis of evidence.

9. We are further mindful that the applicants have asserted false implication and have alleged that the narcotic substance was foisted upon them. Their contention that they are real brothers and have been jointly implicated cannot, at this stage, be accepted as a proved fact in their favour, nor can the prosecution version be conclusively rejected on that basis. Nevertheless, such plea is required to be considered cumulatively with the other circumstances emerging from the record, particularly the disputed manner of recovery, non-association of private witnesses despite the alleged populated locality, and the question concerning the safe custody and transmission of the samples.

10. We are conscious of the fact that the alleged quantities of charas recovered from the applicants are substantial and constitute a serious incriminating circumstance against them. However, the mere quantity of the alleged narcotic substance does not, by itself, oust the jurisdiction of the Court to examine whether the case falls within the ambit of further inquiry. The Court is required to assess the entire material available on record in its totality and determine whether the prosecution case, at this tentative stage, is free from such circumstances as may reasonably call for further inquiry.

11. It is also significant that, as presently appearing from the record, the investigation has been completed and the applicants are no longer required for any further investigation. Moreover, keeping in view the punishment attracted by the alleged offence and the lesser sentence applicable in the circumstances of the case, the offence does not, at this stage, fall within the prohibitory clause of **Section 497(1), Cr.P.C.** Consequently, the case is required to be considered in the ordinary framework governing grant of bail, subject to the other statutory considerations. Upon a cumulative assessment of the material presently available on record, particularly the question relating to the delay in dispatch of the samples and the consequent issue of safe custody and transmission, non-association of independent/private witnesses despite the alleged populated locality, and the disputed circumstances surrounding the alleged recovery, we are of the tentative view that the

applicants have succeeded in bringing their case within the ambit of **further inquiry as contemplated by Section 497(2), Cr.P.C.** At this stage, we refrain from recording any final opinion regarding the genuineness of the alleged recovery, the integrity of the chain of custody, or the truthfulness of either version, as the same are matters to be determined by the learned Trial Court after recording and appreciating the evidence.

12. For the foregoing reasons, the instant **Criminal Bail Application is allowed**. The applicants/accused **Shakeel Burfat and Sajjad Burfat** are admitted to **post-arrest bail** subject to furnishing solvent surety in the sum of **Rs.100,000/- (Rupees One Hundred Thousand) each**, along with P.R. Bonds in the like amount, to the satisfaction of the learned Trial Court.

13. Before parting with the matter, it is clarified that the observations made herein are purely tentative in nature and have been recorded solely for the purpose of deciding the present bail application. The same shall not prejudice or influence the learned Trial Court in any manner while deciding the case on its merits. The learned Trial Court shall independently assess the evidence that may come on record and decide the case strictly in accordance with law.

14. These are the reasons for our **short order dated 13.08.2026**, whereby the applicants/accused were admitted to post-arrest bail.

JUDGE

JUDGE