

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Jawad Akbar Sarwana

Criminal Bail Application No.1630 of 2025

Applicant : Niaz Muhammad, through
Mr. Saddam Hussain Tareen
Advocate

Respondent : The State, through
Mr. Muhammad Ahmed DAG

Date of Hearing : 11.09.2025

Date of Decision : 16.09.2025

ORDER

Jawad Akbar Sarwana, J. It is alleged that the applicant/accused is involved in illegal sale and purchase of foreign currencies in violation of the Foreign Exchange Regulation (Amendment) Act ("FERA"), 2020. In May 2025, based on intelligence information, he was found at the Al-Mahmood Bus Terminal, Sohrab Goth, Karachi, in possession of a cash sum of US\$33,000, without any sale/purchase receipts or a licence to trade in foreign exchange ("FX") currency, which is contrary to Pakistani law. Thus, he was taken into custody by the Federal Investigation Agency ("FIA"), and an FIR No.14/2025 was registered under Sections 4(1) and 23 of the FERA Act, 2020 at P.S. FIA, ACC, Karachi.

2. The applicant/accused, on being refused post-arrest bail by the learned District & Sessions Judge Malir, Karachi vide Order dated 26.05.2025, has sought the same from this Court by way of instant bail application u/s 497 Cr.P.C.

3. Heard arguments and perused the record. The facts of the case are set out in the memo of the bail application and FIR.

4. Counsel for the applicant/accused has contended that the accused applicant was allegedly found in possession of foreign

currency, yet there are no independent witnesses cited or produced in support of such recovery. He contends that there is no CCTV footage of the arrest. He denied that the accused applicant was the supplier and argued that the Whatsapp messages found on the accused applicant's smartphone had yet to be forensically examined. He contended that the alleged raid did not have its genesis based on a complaint filed by the State Bank of Pakistan ("SBP"), and search warrants had not been obtained prior to the raid. As such, he submitted that the raid and the following arrest were unauthorised, and not in accordance with the law. Finally, as the offence under Section 23 of the FERA, 2002, carries a maximum punishment of five years or a fine, the bar to bail did not apply in the case at hand. Lastly, the accused was a Pakistani resident, and the mere fact that he was proceeding to Chaman in Balochistan did not make him a flight risk. Accordingly, he submitted that the accused applicant was entitled to the concession of bail.

5. Learned DAG opposed the concession of bail. He submitted that the accused applicant was found carrying a considerable amount of cash in United States Dollars, US\$33,000, without any license or permit issued by the SBP to deal in such large foreign currency. He argued that the accused applicant was involved in foreign currency dealings with Afghan nationals. He contended that the accused applicant was apprehended near the Chaman border and was a flight risk if bail was confirmed, particularly as the investigation was still underway and yet to be completed. Learned DAG, prayed that the post-arrest bail ought to be dismissed.

6. Heard Counsel. The applicant accused was found to be carrying US\$33,000 in cash, which in itself is not a crime. Neither is carrying Pakistan Rupees in cash a crime. Further, the accused/applicant was not apprehended by the raiding party as he was about to or had already purchased the US\$. He was

found to have on him a large amount of US\$33,000 cash. His defence before the police authorities, notwithstanding its admissibility, was that he is not a dealer and was asked to carry the cash rupees given by his brother to one Sadik, who handed him US\$ in return, which he intended to then take to Chaman for his employer/brother. The chain of events is not clear. To whom was he supposed to hand over the US\$ in Chaman? His brother or his employer in Afghanistan? How did his brother have the equivalent of US\$33,000 in Pakistani rupees? All this entails further inquiry.

7. The WhatsApp messages to support the prosecution's case, as per the learned DAG, have been sent across for electronic forensics, which is ongoing.¹ The messages have yet to be scrutinised, and it remains to be established who was involved in the crime, whether the accused applicant was simply carrying out the orders of his principal/employer or was he following his brother's advice, or did he actively abet in the crime, etc. This also calls for further investigation.

8. The offence with which the applicant is charged under the FERA Act, 2001 carries a potential sentence of upto five years and although not bailable falls within the non-prohibitory clause of section 497 Cr.P.C. While the accused/applicant is a Pakistani national, he apparently worked for an Afghan National Quadratullah, residing in Boldak, Kandahar Province, Afghanistan. The accused/applicant's brother, Bakht Muhammad, who handed him the Pakistan Rupees to purchase the US\$, is also a Pakistani national. It is yet to be determined how accused/applicant's brother, Bukht Mohammad, financed the funds for the purchase of the US\$ in return. Finally, the person to whom the accused handed the Pakistan Rupees and obtained US\$ is also a Pakistani citizen named Haji Sadik based

¹ Abdul Karim v. The State, 2024 YLR 2635

in Karachi. It is no one's case that the US\$33,000 was purchased using any FX currency. The sum of US\$33,000 at the open market exchange rate totalled Ninety Four Lacs Twelve Thousand Five Hundred only (PKRs.94,12,500/-) = Nine Million Four Hundred Twelve Thousand Five Hundred only (PKRs.9,412,500/-) was purchased exclusively from Karachi, Pakistan. Given that the nationality of the three, that is the accused, the accused brother and Haji Sadik, are all Pakistani, and there is a border between Afghanistan and Pakistan, the learned DAG's apprehension that the accused is a flight risk, must be understood in the context of the crime and nationalities of the accused/co-accused, and that the currency exchanged for the US\$33,000 was in Pakistani Rupees. The risk of flight is not automatic, and, in the facts and circumstances, this bench extends the benefit of doubt to the accused/applicant.

9. During arguments, the accused Counsel has submitted that the offence charged under FERA, 2002 mandates a filing of a complaint with the authorisation of the SBP and thereafter the Court taking cognisance except upon complaint and not otherwise. He has argued that FIA did not follow the specific procedure prescribed, and the mechanism to be undertaken against the accused in cases of arrest is not made out under Section 23 of FERA, 2002. The learned DAG, after sufficient hearing dates, has also not been able to readily identify, so far, whether these documents, which were required for conducting the arrest and taking the accused applicant into custody, were/are available in the police file. According to the Counsel for the applicant/accused, the documents ought to include "authorisation by the Federal Government or the State Bank of Pakistan" and "search warrants" under Sections 19(3) and 23(3) of the FERA Act, 2002. Suffice to say, although at this stage the point involved is not a matter to be decided by this Court at the bail stage, and may be agitated before the proper forum, that is, the trial Court, yet, when the learned DAG has not been able to

show this bail granting Court materials to negate the accused applicant submissions, the concession for bail, invites potential door for additional favorable consideration.

10. In the above facts and circumstances, and the principles laid down by the Supreme Court in case law involving offences the punishment of which falls within the non-prohibitory clause of section 497 Cr.P.C,² as well as the explaining that the accused applicant still has to do and the issues which are likely to arise from the continuing investigation to be faced by the accused/applicant, I find no extraordinary or exceptional grounds to deny the applicant bail in FIR No.14/2025 dated 02.05.2025 registered at P.S. FIA Anti-Corruption Circle, Karachi. The bail granted to the accused applicant, Niaz Muhammad s/o Khudai Raheem, is subject to the surety amount fixed at Rupees Eight Lacs Only (PKRs.800,000) and a P.R. bond in the like amount to the satisfaction of the trial Court. Thus, this post-arrest bail application is allowed in the above terms.

11. The applicant/accused is directed to cooperate fully with the I.O. of the case. If the I.O. makes a complaint of noncooperation by the applicant/accused, then the learned trial court will be empowered to cancel the concession of bail granted herein by itself with no further reference to this Court. Even otherwise, if applicants/accused misuse the concession of bail during trial, then the trial Court will be competent to cancel his bail without making any reference to this Court.

12. Suffice it to say that the observations made hereinabove are tentative and only for this bail application. Nothing herein shall affect the determination of the facts at the trial or influence the trial Court's decision of the case on the merits.

J U D G E

² Mansha Khan and Two Others v. The State, 1977 SCMR 449; Tariq Bashir and Five Others v. The State, PLD 1995 SC 34; and Mohammad Tanveer v. The State and Another, PLD 2017 SC 733;