

# IN THE HIGH COURT OF SINDH AT KARACHI

## **Criminal Bail Application No.929 of 2026**

Applicants : Raziq son of Faridullah and Abdullah son of Lal Badshah Through: Mr. Raham Ali Rind, Advocate.

Complainant : Nisar Ahmed Siddiqui, Through: Mr. Qamar Abbas Abbasi, Advocate for KW&SC along with SI-Naimatullah of Police Station KW&SC

The State : The State: Through: Mr. Sharaf-ud-Din Kanhar, Assistant Prosecutor General, Sindh

Date of hearing : 31.03.2026

Date of Order : 31.03.2026

### **ORDER**

**Jan Ali Junejo, J**:- This Criminal Bail Application has been filed under Section 497 Cr.P.C. on behalf of the above-named Applicants/Accused, namely Raziq son of Faridullah and Abdullah son of Lal Badshah, who are presently in judicial custody in connection with FIR No. 11 of 2026 registered at Police Station KW&SC, Karachi, under Sections 430, 427, 34 PPC read with Sections 39(2) and 39(3) of the Karachi Water and Sewerage Corporation Act, 2023. It may be noted that the learned KW&SC Tribunal, Karachi, had previously dismissed the bail applications of the applicants vide order dated 06.03.2026, whereupon the present application has been preferred before this Court.

2. As per the prosecution story emerging from the contents of FIR No.11/2026, on 24.02.2026 at 0100 hours, the complainant Nisar

Ahmed, Assistant Executive Engineer, KW&SC, acting on verified information, along with KW&SC Revenue Protection Enforcement Cell officer Nadeem Maqbool, Pakistan Rangers and Police, conducted a raid at Kunwari Colony, near Ibrahim Mosque, Manghopir Road, Karachi, where certain individuals had allegedly established an illegal hydrant by tunnelling under a marble shop and making unlawful connections of 3-inch and 6-inch pipes to the government's 66-inch water main of KW&SC, and had constructed two large cement tanks and one small cement tank for water storage, from which water was being extracted and sold through water tankers for commercial gain; that during the operation, which continued from 0100 hours to 1630 hours, the raiding party apprehended several persons including tanker drivers and cleaners, and seized a large quantity of equipment including 320 bypass pumps, 10 mono-block pumps, 04 rubber pipes, a 45KV generator, wiring, a changeover switch and seven water tankers, all of which were transported to the KW&SC warehouse and COD respectively; that the present applicant Raziq son of Faridullah was apprehended as a cleaner while Abdullah son of Lal Badshah was apprehended as a tanker driver (Tanker No. 12-7); that after the conclusion of the operation, an FIR was registered against the arrested and absconding accused under Sections 430, 427, 34 PPC and Sections 39(2) & 39(3) of the KW&SC Act, 2023, and the applicants were produced before the area Magistrate on 25.02.2026, whereupon they were remanded to judicial custody.

3. Learned counsel Mr. Raham Ali Rind, appearing on behalf of the applicants, argued with considerable vehemence that the applicants are innocent persons who have been falsely implicated due to mala fide intentions and ulterior motives of the police; that according to the very contents of the FIR, the applicant Raziq was merely apprehended as a cleaner of a water tanker while Abdullah was a tanker driver, and neither of them has been attributed any role in the establishment, construction, operation, or management of the alleged illegal hydrant; that the prosecution has itself admitted in the FIR that the applicants were engaged as daily-wage labourers, i.e., cleaner and driver respectively, and therefore they cannot be held responsible for the alleged theft of water or perforation of the KW&SC line; that no recovery of any incriminating article has been effected from the personal possession of either applicant; that the provisions of the KW&SC Act, 2023, particularly Schedule II Sections 39(2) and 39(3), are not attracted to the roles allegedly played by these applicants; that the alleged place of incident is situated in a densely populated area, yet no independent mashir or private witness was associated in manifest violation of Section 103 Cr.P.C.; that no CCTV footage, video recording or photographic evidence has been produced to connect the applicants with the operation of the illegal hydrant; that the offences alleged carry punishment not exceeding five years and therefore do not fall within the prohibitory clause of Section 497 Cr.P.C.; that there is no likelihood of the applicants absconding or tampering with the prosecution evidence, as they are permanent residents of Karachi; and that the basic rule in bail matters is "bail not jail" and

deprivation of liberty without strong grounds is impermissible; learned counsel, therefore, prayed that the applicants be enlarged on bail on such terms and conditions as this Court may deem fit and proper.

4. Mr. Qamar Abbas Abbasi, learned counsel appearing on behalf of KW&SC along with SI Naimatullah of Police Station KW&SC, vehemently opposed the grant of bail and argued that the applicants were arrested red-handed at the spot during a planned raid while actively participating in the operation of the illegal hydrant and the transportation of stolen water; that the applicants are specifically nominated in the FIR with defined roles and the mashirnama of arrest and recovery was duly prepared at the spot in accordance with law; that the gravity and nature of the alleged offence, which involves organised theft of a vital public utility, causing massive financial loss to the government exchequer and depriving ordinary citizens of their fundamental right to water, warrants custodial interrogation and negates the grant of bail; that the argument that crime articles were not recovered from the personal possession of the applicants is entirely without merit, inasmuch as the nature and volume of the seized articles were such that they could not have been found on the persons of the accused; that the investigation is still in progress, the challan has not yet been submitted, and therefore the bail applications are premature; and that in view of the cumulative circumstances, the applicants have failed to make out a case for the concession of bail, and the learned counsel accordingly prayed for dismissal of the present application.

5. Mr. Sharaf-u-Din Kanhar, learned Assistant Prosecutor General, Sindh, submitted in unison that the offences registered in the present case are of a serious and organised nature involving deliberate sabotage of public infrastructure, large-scale theft of water, and commercial exploitation of government resources; that the KW&SC Act, 2023 is a special enactment enacted to protect the water supply infrastructure of Karachi, and its penal provisions must be construed strictly so as to serve the legislative intent; that the applicants were found physically present at the scene of the crime during the operation and were apprehended alongside other co-accused persons, the tankers and ancillary equipment, thereby establishing their participation prima facie; that even if the applicants were drivers and cleaners, their presence at the site in the middle of the night, combined with the active role they were performing in transporting stolen water, renders them equally liable as abettors under Section 34 PPC; that releasing the applicants on bail at this stage would impede the investigation and potentially allow them to intimidate witnesses or tamper with evidence; that the learned KW&SC Tribunal has already dismissed the bail applications of all the accused persons after due consideration; and that, accordingly, both the learned counsel for KW&SC and the learned Assistant Prosecutor General prayed for dismissal of the present bail application.

6. I have considered the arguments advanced by the learned counsel for all the parties at considerable length and have carefully perused the record and material available before this Court. The

present applicants, as clearly discernible from the contents of the FIR, were apprehended not as proprietors, managers, financiers or operators of the alleged illegal hydrant, but in the capacity of a cleaner and a tanker driver respectively. The FIR itself unambiguously enumerates separate categories of persons, namely the owners of the illegal hydrant, the workers at the hydrant, the tanker drivers, and the cleaners, attributing distinct and differing roles to each category. The alleged owners of the illegal hydrant have been identified as Fareed Baloch, Jamshed Mehsud (Marbalwala), Asif Sawati and Azizullah, none of whom are the present applicants. The fundamental question before this Court at the bail stage is not whether the applicants are guilty of the alleged offence, that is a matter for trial, but whether, on a tentative assessment of the available material, reasonable grounds exist to believe that the applicants have committed the alleged offences, and whether the case for detention outweighs the constitutional right to liberty. It is a well-settled principle of law, reiterated in a long line of judgments by the Honourable Supreme Court of Pakistan and this Court, that bail is the rule and jail is the exception, save in cases falling within the prohibitory clause of Section 497 Cr.P.C.

7. The offences alleged in the present case under Sections 430 and 427 PPC read with Sections 39(2) and 39(3) of the KW&SC Act, 2023, carry maximum sentences which, as argued by the learned counsel for the applicants and not satisfactorily rebutted, do not attract the prohibitory clause of Section 497 Cr.P.C. Once it is established that the alleged offences do not fall within the

prohibitory clause, the burden shifts upon the prosecution to demonstrate the existence of exceptional circumstances justifying continued detention, which burden, in the facts and circumstances of this case, the prosecution has not been able to discharge. In the case of *Muhammad Amjad Naeem v. The State through Prosecutor General Punjab and another* (2025 SCMR 1130), the Honourable Supreme Court of Pakistan held as follows: *“There is also another important legal aspect of this case, namely, that bail was refused vide the impugned judgment, notwithstanding the fact that the offence of criminal breach of trust punishable under section 406 P.P.C does not fall within the prohibitory clause of section 497(1) Cr.P.C. This refusal becomes questionable when examined in light of the settled principle of law, namely, that in cases involving commission of non-bailable offences not falling within the prohibitory clause of 497(1) Cr.P.C, bail is granted as a rule and refusal is an exception. Disregard of this cardinal principle of bail jurisprudence warrants serious judicial introspection”.*

8. The applicants, Raziq son of Faridullah being a cleaner and Abdullah son of Lal Badshah being a tanker driver, appear from the face of the FIR to be wage-earning labourers engaged in subordinate roles. No specific overt act of perforation of the KW&SC line, construction of the cement tanks, installation of pumps or operation of the illegal hydrant has been attributed to them in the FIR. The mere physical presence of the applicants at the site, without more, may not be sufficient at this stage to establish their complicity in the more serious aspects of the alleged offence. Taking into consideration the cumulative effect of the foregoing discussion,

namely: (i) the offences alleged do not fall within the prohibitory clause of Section 497 Cr.P.C.; (ii) no recovery has been effected from the personal possession of the applicants; (iii) no specific role in establishing, constructing, managing or operating the illegal hydrant has been attributed to them in the FIR; (iv) the applicants are permanent residents of Karachi and there is no reasonable apprehension of their absconding; (v) they are stated to be daily-wage workers of limited means; and (vi) the cardinal principle that an accused is presumed innocent until proven guilty and that liberty is a precious fundamental right not to be curtailed without sufficient justification, this Court is of the considered view that the applicants have made out a case for the concession of bail.

9. For the reasons set-forth hereinabove, this Criminal Bail Application is allowed. The applicants, namely Raziq son of Faridullah and Abdullah son of Lal Badshah, are admitted to bail subject to their furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) each and P.R. Bond in the like amount to the satisfaction of the trial Court. It is, however, clarified that all observations hereinabove are purely tentative and confined to the adjudication of the present bail application. Nothing stated in this Order shall be construed as an opinion on the merits of the case, and the trial Court shall proceed independently, uninfluenced by any observations contained herein. These are the detailed reasons for the short order dated 31.03.2026.

**JUDGE**