

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 2578 of 2025

Applicant: Ammar through M/s. Mansoor Ali Mahesar & Muhammad Saleh Kolachi, Advocates.

Respondent: The State through Syed Bashir Hussain Shah, Assistant Attorney General a/w Muhammad Ajmal, Deputy Director a/w Inspector Babar Ali, FIA, AHT Circle, Karachi.

Date of Hearing: 29.01.2026

Date of Order: 29.01.2026

ORDER

TASNEEM SULTANA, J.— Through this criminal bail application, the applicant seeks post-arrest bail in Crime No.231 of 2025, registered with FIA, Anti Human Trafficking Circle, Karachi, under Sections 3(2), 13/14 of the Foreigners Act, 1946 read with Sections 420, 468, 471 and 109 P.P.C. Prior to this, the bail application of the applicant/accused was declined by the learned Sessions Judge Malir, Karachi, vide order dated 06.08.2025, hence this bail application for the same concession.

2. Brief facts of the prosecution case are that consequent upon Enquiry No.821/2025 dated 09.07.2025 initiated by FIA, Anti Human Trafficking Circle, Karachi, on receipt of Deported/Detainee Report bearing VRF No.1011/2025 dated 09.07.2025 from Sub-Inspector Adnan Iqbal, In charge Shift "A", FIA Immigration, Arrival JIAP Karachi, it transpired that the applicant along with co-accused arrived at Jinnah International Airport Karachi from Saudi Arabia by flight No. SV-704 dated 09.07.2025 on the strength of Pakistani emergency passports having remarks "NIL BY GOP". During immigration clearance, the said emergency passports were suspected to be fake/forged and the stamps affixed thereon were also suspected to be fake/forged, besides the national status of the accused persons was found doubtful, whereafter they were detained and referred to FIA, AHT Circle Karachi for further necessary legal action. During enquiry, opportunity was provided to the accused persons to arrange and produce documents to establish their national status as bona fide Pakistani nationals, however, they allegedly failed to produce any documentary proof to that effect. It was thereafter alleged that the accused persons were foreign nationals and had used the aforesaid emergency travel documents in such manner, thereby allegedly committing offences punishable under Sections 3(2), 13/14 of the Foreigners Act, 1946 read with Sections 420,

468, 471 and 109 P.P.C., therefore, the present FIR was registered, and the accused persons were arrested.

3. Learned counsel for the applicant submits that the applicant is innocent; he has falsely been implicated in the present case; the prosecution case is mainly based upon documentary suspicion; the emergency passports in question have been declared genuine by the technical authority though allegation of tampering has been made, which itself requires deeper probe and trial evidence; no recovery of any forged instrument or fabrication material has been affected from the possession of the applicant; the applicant is in custody and no further recovery is required; that the applicant has placed on record documents relating to his parentage including CNICs and identity documents of his parents showing that they are Pakistani nationals; old identity record and civil registration traces of the family have also been placed on record; that though data relating to the present applicant is presently not traceable in NADRA record, however, foreign record including Saudi resident identity record reflects that the parents of the applicant are recorded as Pakistani residents; that these documents form a connecting identity chain supporting the claim of the applicant being a Pakistani national and the matter requires determination after recording of evidence; the case of the applicant therefore falls within the ambit of further inquiry.

4. Conversely, learned Assistant Attorney General submits that the applicant is involved in serious offence relating to misuse of emergency travel documents; the applicant along with co-accused arrived in Pakistan on emergency passports containing suspicious and altered personalized entries; the technical examination report reflects that though the base passports were genuine, however, tampering in personalized data has been detected; that such tampering was carried out to substitute identity particulars; the national status of the applicant was found doubtful during immigration clearance process; that under Section 9 of the Foreigners Act, 1946, the burden lies upon the applicant to prove that he is not a foreigner; that the applicant has failed to produce conclusive proof of his Pakistani citizenship; NADRA data relating to the applicant is not traceable; therefore, the applicant does not deserve concession of bail.

5. Heard. Record perused.

6. I am fully cognizant of the well-settled principle that at the bail stage, the court is not to make a deeper examination and appreciation of the evidence collected during the investigation or to conduct anything like a preliminary trial to determine the accused's guilt or innocence. However, for

deciding instant bail plea, the question of whether or not there exists reasonable grounds for believing that he has committed the alleged offense cannot be decided in a vacuum. The court, for answering the said question, has to look at the material available on record when the bail is applied for and be satisfied that there is, or is not, prima facie some tangible evidence which, if left unrebutted, may lead to the inference of the guilt of the accused.

7. In the present case, a tentative assessment of the record reflects that the applicant along with co-accused arrived in Pakistan on the strength of emergency passports which were suspected during immigration clearance to be fake or forged, and their national status was found doubtful. The record further reflects that the emergency passports were forwarded to the competent technical authority for examination, wherein it has been opined that the base passports were genuine documents issued through competent authority, however, certain tampering relating to personalized data entries was observed. The determination as to when such alleged tampering was carried out; by whom such alleged manipulation was effected; whether the applicant had any role in such alleged alteration; whether the applicant had knowledge of such alleged manipulation at the time of use of the document; and whether such alleged alteration was carried out prior to issuance or subsequently, are all questions which require recording of evidence and deeper probe by the learned trial Court and cannot be conclusively determined at bail stage.

8. To elaborate on the subject, it is expedient to have a glance at Sections 9 and 14 of the Foreigners Act, 1946, which cast a duty upon the applicant to establish that the applicant was/is not a foreigner and such penalties if contravenes the Act is reproduced herein below: -

"Section 9 Burden of Proof.---If in any case not falling under section 8 of any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description the onus of proving of that such person is not a foreigner or is not a foreigner of such particular class for such description as the case may be, shall notwithstanding anything contained in Evidence Act, 1972 lie upon such person.

14. Penalties. Where any person contravenes any provisions of this Act or of any order made thereunder, or any direction given in pursuance of this Act or order, he shall, except as otherwise provided herein, be punished with imprisonment for a term which may extend to three years and shall also be

liable to fine, and if such person has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall liable to be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting Court as to why such penalty should not be paid. (2) Where any person knowingly enters into Pakistan illegally, he shall be guilty of an offence under this Act and shall be punished with imprisonment for a term which may extend to ten years and fine which may extend to ten thousand rupees.]

14A. Restriction release on bail. Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), hereinafter referred to as Code, any accused of an offence punishable under subsection (2) of section 14 shall not be released on bail if there appear reasonable grounds for believing that he has been guilty of such offence.”

9. The principal objection raised by the prosecution is that the applicant has failed to satisfactorily establish his citizenship of Pakistan and, in terms of Section 9 of the Foreigners Act, 1946, the burden lies upon the applicant to prove that he is not a foreigner. The material placed on record, however, prima facie reflects that the documents relating to parentage of the applicant have been produced including identity documents of the parents showing Pakistani nationality. The record further indicates existence of civil registration traces and identity-linked documentary material, whereas foreign record including resident identity record reflects parentage linkage indicating Pakistani residency status of the parents. At this stage, the probative value, authenticity and legal effect of such documents are matters requiring evaluation through evidence and cannot be conclusively determined at bail stage.

10. Accordingly, on the tentative assessment of the facts and circumstances of the case, I am of the view that the matter squarely falls within the preview of further inquiry as the FIA authorities are still seeking verification of the documents and making only correspondence with other departments and are not clear about the citizenship of the applicant whether he is Pakistani or otherwise and even they have not sought cancellation Passport of the applicant and they only conducting the rooming inquiry. The offenses under sections 420 and 471, P.P.C. are bailable, insofar as the offense under section 468, P.P.C. is concerned the punishment does not fall within the prohibitory clause of section 497, Cr.P.C., therefore, prima-facie, the material currently available on the record of the case is not sufficient to say that there are reasonable grounds for believing that he has committed the alleged offenses; but there are sufficient grounds for further inquiry into his guilt in terms of Section 497(2) of Cr.P.C. On the aforesaid proposition, I am guided by the decisions of the Supreme Court in the cases of

Muhammad Sarfraz Ansari Vs. The State 2021 PLD SC 738 and Malik Muhammad Tahir Vs. The State 2022 SCMR 2040.

11. As far as Section 14 Foreigners Act is concerned, the evidence against the accused is still to be evaluated and it is yet to be seen as to whether it is applicable under the attending circumstances of the case or not. In such circumstances of the case, the Supreme Court of Pakistan in the case of Haji Wali Muhammad v. The State 1969 SCMR 233 held as under:-

"As a general rule on a charge of the kind made in this case not invoking a sentence of death or transportation for life, bail should ordinarily be allowed disregarding the grounds of the seriousness or anti-social nature of the offence, unless there are strong grounds, in the shape of evidence for the belief that he is guilty".

12. The learned counsel for the applicant also placed reliance on PLD 1988 Karachi 64, wherein the accused was charged under section 14-Foreigners Order, 1951, Article 3(a), and he was allowed bail. Reliance can well be made on MLD 2017 Page 259, wherein it was held that bail cannot be denied to the accused when it is a well-settled principle of law that bail cannot be withheld as conviction in advance. The rest of the sections do not fall within the prohibition contained in section 497, Cr.P.C. Moreover, the accused/ applicant is neither required for investigation nor is a previous convict.

13. The Supreme Court in the case of Saeed Ahmed Vs. The State 1996 SCMR 1132 held as under: -

"3. The learned counsel for the petitioner contended that there is no prohibition for grant of bail in respect of offences mentioned above, but with mala fide intention subsequently offence under section 409, P.P.C. has also been added in order to bring the petitioner's case within the prohibitory clause of section 497, Cr.P.C. The case entirely depends upon documentary evidence which seems to be in possession of the prosecution and challan has already been submitted. The objection of the learned counsel regarding addition of section 409, P.P.C. may carry some weight while considering the bail, application. As there is no possibility of tampering with the evidence, which is entirely documentary in nature and in possession of the prosecution, in the circumstances, we convert the petition into an appeal and allow it, and grant bail to the petitioner on furnishing one surety in the sum of Rs.50,000 to the satisfaction of the Deputy Registrar, Supreme Court, Lahore."

14. In view of the above facts and circumstances, instant bail application is allowed and the applicant Ammar is admitted to post-arrest bail subject to furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand only) and P.R bond in the like amount to the satisfaction of learned trial Court.who shall ensure that the surety must be local, reliable and men of means and he shall ensure his attendance on every date of the trial proceedings so that the trial is not delayed on his account. In the event he fails to do so, the F.I.A. shall be at liberty to apply to recall this order.

15. The observations made herein are tentative in nature and shall not influence the learned trial Court in any manner.

JUDGE

Nadeem