

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA**

**1st. Cr. Bail Appl. No. S-152 of 2025**

Applicant:	Muhammad Imran Khan son of Mohammad Aslam Khan, Through Mr. Saeed Ahmed Bijarani
The State:	Through Mr. Nazir Ahmed Bhangwar, Dy. Prosecutor General for the State
Date of hearing:	24-03-2025
Date of order:	24-03-2025

**ORDER**

**Jan Ali Junejo, J.-**Through this Criminal Bail Application, the Applicant seeks post-arrest bail in FIR No. 18/2025, registered under Sections 23(1)(a)(d), 27(a) & (b), of the Sindh Arms Act, 2013 at Police Station A-Section, Kandhkot. The Applicant was initially denied bail by the learned Sessions Judge, Kashmore @ Kandkot, vide order dated 15-03-2025 in Criminal Bail Application No.55/2025, which is now under challenge before this Court.

2. The prosecution's case, as outlined in the FIR registered by the Complainant Head Constable Habibullah Sheikh, states that on 31st January 2025, he along with his team, comprising Police Constables Muhammad Tayab, Muhammad Asad, and Driver PC Ghulam Rasool, were conducting routine patrol duty in a government vehicle (SPE-862) when they received intelligence regarding an armed individual arriving through the highway. Acting upon this information, they set up surveillance near Suhriyani Graveyard (Degree College Road) and intercepted the suspect, later identified as Muhammad Imran Khan, a resident of Mianwali, Punjab. Upon being stopped, the accused allegedly attempted to flee but was swiftly apprehended by the police. A search of his black plastic bag (shopper) led to the recovery of the following items:

- Two 30-bore TT pistols with erased serial numbers
- Twenty live bullets
- Cash amounting to Rs. 2,000
- A Nokia mobile phone
- A duplicate Computerized National Identity Card (CNIC No.38302-5401406-9)

During initial interrogation, the accused allegedly confessed that he was engaged in smuggling arms from Punjab with the intent to sell them to Ghulam Mehdi, a resident of Kandhkot, who, according to the prosecution, is known for supplying weapons to criminals operating in the Kacha area. Consequently, the accused was arrested under Section 23(1)(a) of the Sindh Arms Act, 2013, and the recovery was documented in the presence of PCs Muhammad Tayab and Muhammad Asad, who acted as official witnesses (mashirs). The FIR was registered on behalf of the state, also mentioning that the accused sustained minor injuries during the course of his arrest.

3. The learned counsel for the applicant contends that his client is prima facie innocent and has been falsely implicated in this case due to the ulterior motives of the complainant, who merely intended to show efficiency to his superiors. He further contends that all prosecution witnesses are police officials, making them interested parties in a concocted case, thereby reducing the evidentiary value of their statements. He also contends that despite receiving spy information in advance, the complainant failed to associate any private persons as mashirs, which makes the prosecution's case one of further inquiry. He contends that there is an inordinate and unexplained delay of 1 hour and 20 minutes in lodging the FIR, despite the fact that the distance between the place of occurrence and the police station is merely 1 to 1.5 kilometers, creating doubts about false implication and afterthought consultation. He submits that his client, a resident of Mianwali, was traveling to Karachi in a passenger coach with his fighter cock when he was illegally apprehended by the police at Kandhkot bypass, despite being empty-handed. He further submits that the applicant was unlawfully confined at P.S A-Section Kandhkot, where the police allegedly usurped his fighter cock and, on 31.01.2025, registered a false FIR against him by planting a weapon to strengthen their case. He contends that no weapon was actually recovered from the possession of the applicant, and the alleged recovery was later foisted upon him by the police for their own motives. He further contends that the alleged offense carries a minimum punishment of seven years and a maximum of fourteen years; however, for the purpose of bail, the minimum sentence should be considered, which does not bring the case

within the prohibitory clause of Section 497 Cr.P.C. He also contends that there are no reasonable grounds to believe that the applicant has committed an offense punishable by ten years of rigorous imprisonment or life imprisonment. He submits that the applicant is no longer required for further investigation, and there is no likelihood of tampering with evidence or influencing witnesses, as they are all police officials. He contends that there is no probability of conviction in the present case, and the matter requires further inquiry under subsection (2) of Section 497 Cr.P.C., entitling the applicant to the concession of bail. Lastly prayed for grant of bail.

4. The learned Deputy Prosecutor General (DPG), having waived notice, contends that the applicant was lawfully arrested based on credible spy information, and the recovery of a weapon from his possession is strong evidence of his involvement in the alleged offense. He argues that the delay in lodging the FIR was due to procedural formalities and does not weaken the prosecution's case. He further asserts that the absence of private witnesses is immaterial, as police officers are competent witnesses under the law. Emphasizing the gravity of the offense, which carries a maximum punishment of fourteen years, he submits that granting bail in such cases could set a precedent that undermines law enforcement efforts. He dismisses the applicant's claim of false implication as a mere afterthought, unsupported by independent evidence, and argues that there are reasonable grounds to believe the applicant committed an offense punishable with imprisonment exceeding ten years, thereby attracting the prohibitory clause of Section 497 Cr.P.C. Lastly, he contends that the applicant's release would impede trial proceedings and hinder the fair dispensation of justice, praying for the dismissal of the bail application.

5. I have carefully considered the arguments advanced by the learned counsel for both parties and have meticulously examined the available record. At this juncture, a significant legal question emerges regarding the distinction between the terms "*arms*" and "*firearms*" as defined under the Sindh Arms Act, 2013. According to Section 2(c), "*arms*" include a *pistol*, whereas Section 2(d) separately defines "*firearms*", which notably does not encompass a *pistol*. The penal provisions of the Act also maintain a clear distinction between these two categories. Specifically, Section 23(1)(a)

prescribes a maximum punishment of up to 14 years for offenses involving *firearms*, whereas Section 24 deals with offenses related to *arms*, prescribing a lesser sentence of up to 10 years. In the present case, where the recovery pertains to two pistols, it remains to be conclusively determined whether the alleged weapons fall within the definition of “*firearms*” under Section 2(d), thereby attracting Section 23(1)(a), or whether they merely qualify as “*arms*” as per Section 2(c), which would place the offense under Section 24 of the Act. This legal determination is crucial in assessing the severity of the offense and the appropriate penal provision applicable to the case. It is a well-established principle of law that when a case falls within the ambit of *further inquiry*, as contemplated under Section 497(2) Cr.P.C., the benefit thereof must be extended to the accused at the bail stage. In the present matter, the prosecution has yet to furnish conclusive evidence distinguishing whether the recovered weapon qualifies as a *firearm* or an *arm*, thereby rendering the case arguable. Consequently, the determination of the precise penal provision remains an open question, which can only be resolved during the course of trial. Section 23(1)(d) of the Act prescribes a punishment of up to ten years of imprisonment along with a fine. However, the Challan also includes Sections 27(a) and 27(b) of the Act, which carry a lesser penalty of up to seven years of imprisonment along with a fine. The specific offence attributable to the Applicant is yet to be conclusively determined and will be established during the trial. Furthermore, the applicant is no longer required for further investigation as the police have already submitted the challan. There is no material on record indicating that the applicant has any prior criminal record, nor is there any likelihood of him absconding or tampering with prosecution evidence. In view of the foregoing discussion, the Applicant’s case falls within the ambit of *further inquiry* as contemplated under Section 497(2) Cr.P.C., thereby entitling him to the concession of bail at this stage. Furthermore, the prosecution has failed to demonstrate any *exceptional circumstances* that would justify the denial of bail to the applicant. This Court has already established a precedent in similar circumstances in ***Ayaz Ali v. The State (PLD 2014 Sindh 282)***, wherein it was observed that: “*The joint reading of section 23 (1)(a) and section 24 of the Act would show that the subsection (1)(a) of section 23 of the Act deals with situation where one acquires, possession carries or control any firearm*

*or ammunition in contravention of section 3 (i.e. 'license, for acquisition and possession of fire-arms and ammunition) while the section 24 of the Act punishment for possessing arms or ammunition licensed or unlicensed with the aim to use them for any unlawful purpose. It is germane to append here that plain reading of sections 23 and 24, elucidate that section 23(1)(a) provides maximum punishment upto 14 years, whereas section 24 provides upto ten years, thus, apparently instant case, wherein recovery is pistol, which falls within the definition of "arms" as provided in the section 2, which carries maximum sentence ten years as provided in section 24 of the Sindh Arms Act, 2013. As the quantum of punishment has to be determined by the trial Court. In such like cases whether accused would be liable to the maximum punishment provided for the offence and also as to whether the punishment in case of proof of the guilt after trial in the circumstances would fall under the prohibitory clause are the questions requiring further probe, as the maximum punishment provided under section 24 of the S.A.A., 2013, is ten years, discretion is left upon the trial Court by the Legislature to decide the fate of the case according to the circumstances of the case commensuration with the nature of case. The record is also silent as to whether the applicant is a habitual or previous convict, hence all these facts makes the case against him as that of further inquiry".*

6. Consequently, the Applicant is admitted to bail, subject to furnishing a solvent surety in the sum of Rs. 1,00,000/- (Rupees One Hundred Thousand) and a PR bond in the like amount to the satisfaction of the trial Court. It is, however, clarified that any observations made herein are tentative in nature and shall not prejudice the trial of the case on merits. These are the reasons for short Order dated: 24.03.2025. The listed applications are disposed of as granted and in view of disposal of the exemption application the office objection is also considered as resolved.

**JUDGE**