

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No. 438/2025

Applicant : Chaudhary Muhammad Asif son of Abdul Rasheed,
Through Mr. Khawaja Muhammad Azeem,
advocate

Respondent : The State
Through Mr. Sharafuddin Jamali, Assistant
Attorney General.

Date of hearing : 29.04.2025

Date of order : 05.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J. –Applicant, Chaudhary Muhammad Asif, seeks pre arrest bail in a case emanating from FIR No. 76/2024, registered under Sections 3 & 6 of the Prevention of Smuggling of Migrants Act, 2018, with FIA Karachi. Earlier bail plea of applicant was declined vide order dated: 12.02.2025 by the learned Sessions Judge Malir Karachi.

2. The allegation against the present applicant arises out of an inquiry initiated consequent to the deportation of one Muhammad Zahid Iqbal from Turkey. As per the record, the said deportee was detained by Turkish authorities for illegal entry and was eventually deported to Pakistan via Emergency Passport No. TRA10041, issued by the Consulate General of Pakistan at Istanbul. Upon his arrival at Jinnah International Airport, Karachi, he was referred to FIA authorities for verification and legal action. During inquiry, the deportee disclosed that about one and a half years prior, he was desirous of seeking employment in Turkey. For this purpose, he contacted the applicant, Ch. Muhammad Asif, who allegedly offered to facilitate his travel to Turkey via illegal land routes through Iran. It is alleged that a sum of Rs. 250,000 was agreed upon as consideration, which was to be paid upon the victim's arrival in Turkey. The applicant is further alleged to have directed the victim to reach at Quetta, where he was received by another (unidentified) agent. From there, he was illegally transported through Iran and into Turkey without valid documents. Following his detention and deportation, the victim implicated the present applicant as a key facilitator in the migrant smuggling operation.

3. Learned counsel mainly contended that the applicant is innocent and has been falsely implicated on the basis of a belated and uncorroborated statement of the deportee. It was argued that the incident allegedly occurred over a year ago and no complaint or FIR was lodged during this entire period by the alleged victim or his family. The applicant has no criminal history and is a respectable citizen. The amount allegedly paid was not transferred through any documented or banked channel; no receipt or witness has been produced in support of the prosecution's claim. He urged, the only piece of evidence against the applicant was the statement of pax; however, in his affidavit placed on record has exonerated the applicant from commission of alleged offence. Moreover, it was contended that offences under the Prevention of Smuggling of Migrants Act, 2018, while non-bailable, do not fall within the prohibitory clause of Section 497 Cr.P.C, and that the case calls for further inquiry, as contemplated under the second proviso to Section 497(2) CrPC.

4. Conversely, the learned Assistant Attorney General opposed confirmation of bail, arguing that the offence in question is serious in nature, involving transnational migrant smuggling. The applicant has been named with specific allegations by the deportee and is alleged to have played a direct role in facilitating the illegal border crossings. The smuggling of migrants not only endangers lives but also undermines Pakistan's international obligations. It was argued that custodial interrogation of the applicant is necessary to unearth the wider smuggling network, including identification of foreign agents.

5. The record reveals that the principal piece of evidence relied upon by the prosecution is the statement of the deportee, recorded subsequent to his return from Turkey. However, such statement, having been made before the police, is inadmissible in evidence under Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984. Furthermore, the said deportee, Muhammad Zahid Iqbal, has filed an affidavit of no objection before this Court, wherein he has categorically denied having disclosed the name of the present applicant to the police or FIA authorities at any stage. This assertion alone creates a significant dent in the prosecution's version and renders the case against the applicant one of further inquiry.

6. Additionally, no documentary evidence has been brought on record to establish the alleged receipt of money by the applicant. Even if the transaction is presumed, it is stated to have occurred over a year prior to the initiation of proceedings, and the unexplained delay in registration of the FIR raises serious

doubts about the spontaneity and credibility of the allegations. The purported route of smuggling and the alleged involvement of unidentified foreign agents remain unsubstantiated at this stage and may ultimately require corroboration through credible and tangible evidence.

7. It is by now a well-established principle of law that pre-arrest bail is an extraordinary relief and not to be granted as a matter of routine. However, where the facts of a case, on tentative assessment, disclose grounds justifying further inquiry within the contemplation of Section 497(2), Cr.P.C., the courts have exercised judicial discretion to extend such relief. The case in hand squarely falls within the category of further inquiry. There is no allegation that the applicant has misused the concession of interim pre-arrest bail granted by this Court. In such circumstances, the settled law permits confirmation of pre-arrest bail. Reliance is placed on the authoritative pronouncement of the Hon'ble Supreme Court in *Rana Muhammad Arshad v. Muhammad Rafique and another* (PLD 2009 SC 427), wherein it was held that anticipatory bail may be granted where the accusation requires further inquiry, and the accused is neither a habitual offender nor likely to abscond or tamper with the prosecution evidence. The determination of guilt or innocence is to be made at the conclusion of a full-dress trial, not at the pre-arrest stage.

8. The very purpose of granting pre-arrest bail is to safeguard an innocent person against abuse of process of law and unjustified arrest. In the present case, no recovery is to be effected from the applicant, nor is there material suggesting his likelihood to abscond or tamper with evidence. The prosecution has yet to substantiate the financial transaction or link the applicant conclusively to a broader syndicate. The applicant has remained available for investigation and no complaint of non-cooperation has been received.

9. From the yardstick of above discussion; I am of the considered opinion that the applicant has made out a case for confirmation of pre-arrest bail. Accordingly, the interim bail already granted to applicant Chaudhary Muhammad Asif vide order dated 18.02.2025 is confirmed under same terms and conditions. Accused to cooperate with investigation and join trial.

J U D G E