IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Bail Application No.S-339 of 2025

Applicant:	Irfan Ali son of Muhammad Anwar Shar, Through Mr. Atta Hussain Qadri, Advocate.
The State:	Through Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh
Date of Hearing:	07-08-2025
Date of Order:	07-08-2025

O R D E R

Ali Haider 'Ada', J:- Through this bail application, the applicant seeks post-arrest bail in Crime No. 20/2025, registered at Police Station Sultankot, for offences punishable under Sections 379, 147, and 149, PPC, as reflected in the challan/report submitted under Section 173, Cr.P.C. Prior to filing the present application, the applicant approached the concerned trial Court, which dismissed his bail plea vide order dated 05.06.2025. Thereafter, he approached before the learned Sessions Judge, Shikarpur, where the matter was entrusted to the learned Vth Additional Sessions Judge, Shikarpur, who also declined to grant bail to the applicant vide order dated 17.06.2025.

2. Brief facts of the case are that the complainant, serving as the Sub-Divisional Officer, WAPDA NTDC, was on patrolling along with his staff when they observed the applicant Irfan Ali, along with Barkat and Aamir, and five unidentified persons, committing theft of electricity wires and loading the same onto a rickshaw. Upon seeing the officials, the accused persons fled from the scene. After completing necessary formalities, the complainant lodged the FIR on 17.05.2025 at 2330 hours, whereas the incident had occurred on the same day at about 2200 hours. Following the registration of FIR, the applicant was arrested on 18.05.2025, and on 19.05.2025, as per the prosecution, he voluntarily confessed to his guilt and

led to the recovery of the stolen property from the pointed place. Subsequently, the challan was submitted against the applicant.

3. Learned counsel for the applicant contends that the offence does not fall within the prohibitory clause, and further there is no possibility that the applicant has committed theft of such wires without any strong tools, as such tools were not recovered but only the recovery was effected and such recovery was not from his possession, as the mashirnama of recovery shows the date on 19.05.2025. He placed reliance upon the case of Muhammad Tanvir v. The State (PLD 2017 SC-733).

4. On the other hand, the learned Deputy Prosecutor General for the State contends that there is no mala fide intent in implicating the applicant in the present case, as recovery has been effected and the applicant has himself confessed to the commission of the offence. He further submits that the applicant has been specifically named in the FIR; therefore, the possibility of his false implication is ruled out. Hence, he supports the impugned order.

5. Heard the arguments of learned counsel for the parties and perused the material available on record.

6. From the perusal of the FIR, it transpires that the main allegation against the applicant is that he was involved in the commission of theft of electricity wires. However, during the course of proceedings, the complainant, who was present in person and bears CNIC No. 45504-6511417-5, submitted that the electricity wires in question were not in working condition. He further stated that he checked the wires in order to verify their status and upon doing so, found that they had been stolen. Furthermore, the prosecution case reveals that the alleged recovery was

effected on 19.05.2025, i.e., one day after the arrest of the applicant. At this juncture, it would be relevant to refer to Article 40 of the Qanun-e-Shahadat Order, 1984, which provides as under:

> ***"40. How much of information received from accused may be proved.*** *When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved".*

7. To bring a case within the scope of Article 40 of the Qanun-e-Shahadat Order, 1984, the prosecution must prove that the accused, while in police custody, gave some information or made a statement to the police that led to the discovery of a new fact related to the offence, something the police did not already know. This information or statement must be recorded in writing. If there is no such statement or information from the accused, then the mere recovery of something is not enough to rely on Article 40. In the present case, only the extra-judicial confessional statement of the accused was recorded regarding the incident, whereas no statement regarding the voluntary production of the alleged stolen property was recorded by the investigating agency. Reliance is placed upon the case of ***Zafar Ali Abbasi and another vs Zafar Ali Abbasi and others,*** **2024 SCMR 1773** wherein it was held that:

> *5. In order to bring the case within the ambit of Article 40 of the Qanun-e-Shahadat Order, 1984, the prosecution must prove that a person accused of any offence, in custody of police officer, has conveyed an information or made a statement to the police, leading to discover of new fact concerning the offence, which is not in the prior knowledge of the police. Such information or statement should be in writing and in presence of witnesses. In absence of information or statement from a person, accused of an offence in custody of police officer, discovery of fact alone, would not bring the case of the prosecution under the said Article. According to the prosecution, a dagger used in the commission of the offence was recovered on the disclosure and pointation of the appellant. Surprisingly, the I.O. did not record the information received from the appellant in writing, in presence of a witness, while he was in police custody.*

8. Furthermore, the present case does not fall within the prohibitory clause of Section 497, Cr.P.C. The highest punishment for the offence under Section 379, P.P.C. is three years, which means it does not fall under the category of serious offences mentioned in the prohibitory clause of Section 497, Cr.P.C. It is a well-settled legal principle that in such cases, granting bail is the general rule, and refusing it is an exception. Reliance is placed upon the case of ***Munawar Bibi vs The State*, 2023 SCMR 1729,** wherein it was held that:

> *The maximum punishment provided under the statute for the offence under section 379, P.P.C. is three years and the same does not fall within the prohibitory clause of section 497, Cr.P.C. It is settled law that grant of bail in offences not falling within the prohibitory clause is a rule and refusal is an exception. Reliance is placed on Tariq Bashir v. The State (PLD 1995 SC 34).*

9. In view of the foregoing reasons, the applicant has made out a case for the grant of post-arrest bail. Accordingly, the instant bail application is allowed, and the applicant, Irfan Ali son of Muhammad Anwar, by caste Shar, is admitted to post-arrest bail, subject to his furnishing a solvent surety in the sum of Rs.50,000/- and a personal bond in the like amount to the satisfaction of the learned trial Court.

J U D G E