

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Bail Application No.S-356 of 2025

Applicant : Hamid s/o Haji Anwar @ Ali Nawaz Jatoi,
through Mr. Sher Ali Chandio, Advocate.

Respondent : The State, through Mr. Aitbar Ali Bullo,
Deputy Prosecutor General

Date of Hearing : 13.08.2025.
Date of Order : 13.08.2025.

ORDER

Ali Haider 'Ada':J. Through this bail application, the applicant seeks post-arrest bail in Crime No. 214/2025, registered at Police Station Mehar, for an offence punishable under Sections 24 and 25 of the Sindh Arms Act, 2013. Prior to filing the present application, the applicant had approached the learned Sessions Judge, Dadu, who entrusted the matter to the learned Additional Sessions Judge-I, Mehar. However, the said Court, after hearing the parties, dismissed his bail application.

2. The brief facts of the prosecution case, as narrated in the FIR, are that on 24-06-2025, the complainant SIP Ghulam Mustafa Solangi, who had earlier arrested the applicant in Crime No. 206/2025 for offences punishable under Sections 324, 504, 114, 147, 148, 149, 506(2), 337-A(i), 337-F(i), and 337-H(ii), PPC, registered at Police Station Mehar on the complaint of one Sanaullah, stated that during interrogation the applicant/accused Hamid voluntarily disclosed information regarding the weapon allegedly used in that crime. He purportedly revealed that a single-barrel breech-loading (SBBL) gun was hidden at a certain location. Acting on this disclosure, the complainant, along with the accused, proceeded to the indicated place, where the SBBL gun was recovered on the pointation of the accused. Thereafter, the present FIR was registered.

3. Learned counsel for the applicant submits that the accused was shown to have been arrested on 19-06-2025, whereas the alleged recovery was stated to have been effected on 24-06-2025. He further contends that there is no recorded confessional statement regarding the voluntary production of the weapon; hence, the requirements of Article 40 of the Qanun-e-Shahadat Order, 1984, are not fulfilled in the present case. It is also

argued that, in the main offence, the applicant has not been assigned any specific role in causing any serious injury. On these grounds, he prays for the grant of bail.

4. Conversely, learned counsel for the State submits that the recovery was effected on the pointation of the applicant/accused; therefore, he is not entitled to the concession of post-arrest bail.

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

6. The question of mere recovery does not entitle the prosecution to decline the relief, even otherwise, the applicant Zaid was arrested on 19-06-2025, whereas the alleged recovery was shown to have been effected on 24-06-2025. In this context, reliance is placed upon the case of ***Syed Qurban Ali Shah and another vs The State* 2025 YLR 246**, as held that:

11. Taking into account the bail plea raised in the cases concerning the production of the crime weapons, it is noted that following their arrest, the accused expressed willingness during interrogation to produce the weapons used in the commission of the aforementioned offense. However, despite this knowledge, the police failed to associate mashirs of recovery from the local community, except for the mashirs closely associated with the complainant, who are not residents of the locality where the alleged recovery was made. This recovery was documented under a joint memo.) indicating that both accused had produced unlicensed pistols. It is significant to note that the FIR in Crime No. 3/2024 does not mention whether the 30-bore pistol allegedly produced by applicant Syed Qurban Ali Shah was unlicensed. While it is acknowledged that the maximum punishment provided for the offense under section 25 of the Sindh Arms Act, 2013, is imprisonment for up to ten years, discretion is vested with the trial court by the legislature, as held by this Court in the case of "Dilawar v. The State" (2023 PCr.LJ 1684), which reveals as under:

8. The applicant is confined in judicial custody since the day of his arrest and police has submitted the challan against him; hence he is not required for further investigation. Despite prior information, daylight and roadside, police failed to join any private person to witness the search and recovery process. Record is also silent as to whether applicant is a habitual or previous convict, All the witnesses are police officials; therefore, there is no apprehension of tampering with the prosecution evidence. The case of the applicant is pending for adjudicating into his guilt before the trial Court. The discretion is however left open with the trial Court by the legislature either to award maximum punishment of ten years imprisonment to the applicant or to award lesser punishment keeping in view the surrounding circumstances commensurate with the nature of the case. The Court while hearing bail application does not have to keep in view the maximum sentence provided by statute but the one which is likely to be entailed in the facts and circumstances of the case.

Therefore, keeping in view the facts and circumstances of the case, prima facie, case against the applicant requires further enquiry as contemplated under subsection (2) of section 497, Cr.P.C. Accordingly, the applicant is entitled to be released on bail."

7. It is further noted that such recovery was shown to have been voluntarily disclosed by the accused during interrogation. 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 discovered as a 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".

8. To bring a case within the ambit of Article 40 of the Qanun-e-Shahadat Order, 1984, the prosecution must establish that the accused, while in police custody, provided some information or made a statement to the police which directly led to the discovery of a new fact connected with the offence something the police were not already aware of. Such information or statement must also be put into writing. If no such statement or information exists, then the mere act of recovery cannot be treated as falling under Article 40. As in the present case, such a statement is conspicuously missing, which further weakens the prosecution's stance at this stage. In this Context, reliance is placed on the case of ***Zafar Ali Abbasi and another v. 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 discovery 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

9. In bail matters, Courts don't conduct a deep trial. The test is whether the material creates reasonable grounds of guilt or the case calls for further

inquiry under Section 497(2) Cr.P.C. If there is doubt or two plausible views, the presumption of innocence and benefit of doubt favour the accused even at bail stage. Reliance is placed upon the case of *Resham Khan and another vs The State* 2021 SCMR 2011.

10. In view of the foregoing circumstances, the bail application of the applicant Hamid, seeking post-arrest bail, is allowed. He is admitted to post-arrest bail subject to furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand only), along with a personal bond in the like amount, to the satisfaction of the learned trial Court. Consequently, the bail application stands disposed of in the above terms.

J U D G E

Asghar Altaf/P.A