

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Criminal Jail Appeal No.S-20 of 2025
(Ali Dino Vs. The State)

DATE	ORDER WITH SIGNATURE OF JUDGE
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01. For hearing of main case.
02. For orders on M.A.No.3453/2025 (426 Cr.PC).

29.08.2025

Mr. Habibullah G. Ghouri, Advocate for the appellant.

Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh.

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ORDER

Ali Haider 'Ada' J.- This application under Section 426, Cr.P.C. has been filed by the appellant Ali Dino, seeking suspension of the sentence awarded to him and his release on bail, pending final disposal of his criminal appeal against conviction.

2. The appellant was convicted by the learned trial Court in Sessions Case No.203 of 2023, arising out of FIR No.28/2023 registered at Police Station Ratodero, for offences punishable under Sections 353, 412 and 34, PPC. He was sentenced to undergo rigorous imprisonment for ten (10) years and to pay a fine of Rs.10,000/-, and in case of default in payment of fine, to further undergo simple imprisonment for one (01) month. The applicant has preferred an appeal before this Court against his conviction and sentence, which is presently pending adjudication..

3. Concise facts of the prosecution case are that on 01.02.2023, complainant ASI Sodho Khan received spy information that certain accused persons, regarding a robbery of golden ornaments, involved in FIR No.06 of 2023 under Sections 395, 397, and 452, PPC were present at the shop of co-appellant Sajjad Khokhar, situated in the Jewellery Market, Ratodero, with intent to sell the robbed property. Acting upon such information, the police party proceeded to the pointed place, where they saw accused Sajjad, Naveed, and the present appellant Ali Dino. At that time, accused Sajjad and Naveed were allegedly counting the sale proceeds for handing over the same to appellant Ali Dino. On seeing the police party, Sajjad and Naveed managed to escape, and during the course of resistance, two buttons of the complainant’s shirt were torn. However, accused Ali Dino was apprehended on the spot, and during interrogation, he

allegedly confessed his involvement in FIR No.06 of 2023 regarding the commission of dacoity. Thereafter, the present FIR No.28 of 2023 was lodged.

4. Learned counsel for the appellant submits that the co-appellant/co-accused has already been granted bail by this Court vide order dated 11.07.2025, as his sentence was suspended, therefore, the rule of consistency squarely applies to the present case. It is further contended that, as per settled principles of law, the registration of a second FIR in respect of the same occurrence is not permissible. At the most, Section 412, PPC could have been incorporated by way of supplementary challan in the earlier case arising out of Crime No.06 of 2023, which pertains to the alleged dacoity. It is further argued that even in the present case under Section 412, PPC, the complainant of the main crime was not examined to establish the identification of the appellant, whereas the prosecution relied merely on the alleged admission of the appellant recorded in the FIR, which, in law, cannot be treated as substantive evidence. Learned counsel submits that the fate of the main case (Crime No.06 of 2023) is still pending adjudication, and the conviction in the present matter is nothing but a premature outcome, dependent on the eventual decision of the main case. It is also urged that as per the jail roll, the appellant has already served a substantial portion of his sentence, and in such circumstances, the continuation of his incarceration would amount to unjustified hardship, particularly when the appeal is not likely to be decided in the near future. Hence, suspension of sentence and grant of bail is prayed for.

5. Conversely, learned D.P.G. has opposed the application contending that mere filing of an appeal or prolonged detention are not in themselves sufficient grounds for suspension of sentence. However, it is admitted that the appeal may take considerable time for final adjudication. It is also an admitted position that the co-appellant's sentence was suspended by this Court and such order has neither been challenged by the State nor set aside by the Hon'ble Supreme Court.

6. Heard the arguments of both sides and perused the record.

7. First and foremost, it is pertinent to note that the co-appellant namely Sajjad Khokhar was granted bail by this Court in Criminal Appeal No. S-23 of 2025, and the said order has not been assailed by the State or any aggrieved person before the higher forum. Therefore, on the touchstone of judicial propriety, the rule of consistency is fully attracted to the case of the present appellant. In this context, reliance is placed upon the case of *Muhammad Nawaz and others v. The State and others* (2021 YLR Note 59).

8. Furthermore, the record reflects that as per the jail roll, the appellant has already served out, including remissions, a major portion of the awarded sentence. In these circumstances, there is no justification for his continued confinement for an indefinite period, particularly when the main appeal is not likely to be decided in the near future. Even the main case is still pending adjudication, and, if, the sentence is not suspended, there is a strong likelihood that the appellant may serve out the entire sentence before the decision of his appeal, which would amount to punishment in advance and render the appeal itself meaningless. Support in this regard is drawn from the cases of *Anwar-ul-Haq v. National Accountability Bureau* (PLD 2009 SC 388), *Adnan A. Khawaja v. The State* (2008 SCMR 1439), and *Makhdoom Javed Hashmi v. The State* (2008 SCMR 165).

9. Furthermore, the appellant is allegedly shown to have confessed his guilt in connection with the offence of dacoity, yet the entire record indicates that no witness from the main case has been examined to establish such guilt. At this stage, when serious doubtful circumstances arise from the prosecution case, the benefit of such doubt is to be extended to the appellant. In this regard, guidance can be taken from the case of *Muhammad Arshad v. The State and another* (2022 SCMR 1555), wherein the Honourable Supreme Court held that the benefit of doubt can be extended to an accused even at the preliminary stage, including bail and suspension of sentence.

10. For the foregoing reasons and in view of the discussion made hereinabove, the instant application stands allowed. Accordingly, the conviction and sentence awarded to the appellant Ali Dino in Sessions Case No.203 of 2023, arising out of FIR No.28 of 2023, registered at Police Station Ratodero, for offences punishable under Sections 353, 412 and 34, P.P.C., are hereby suspended. The appellant shall be released on bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand only) and a P.R. bond in the like amount to the satisfaction of the Additional Registrar (Judicial) of this Court. The case is adjourned to 02.10.2025 for hearing of the main appeal. The appellant is directed to ensure his presence before this Court on all subsequent dates of hearing till the final disposal of the appeal. Office is directed to issue release order forthwith.

JUDGE