

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Dr. Syed Fiaz ul Hassan Shah

Criminal Bail Application No.1934 of 2025

Applicant : Muhammad Hashim @ Asim S/o Abu Bakar through Mr. Ahmed Ali Gabol, Advocate

Respondent : The State through Ms. Rubina Qadir, Addl. P.G. a/w Complainant present in person.

Date of hearing : 25.09.2025

Date of order : 25.09.2025

ORDER

Dr. Syed Fiaz Ul Hassan Shah, J. - Through this Bail Application, applicant/accused seeks post-arrest bail in Crime No.490/2025 for offence under Section 379 PPC registered at PS Gadap City. His bail plea has been declined by the learned MTMC-II & Judicial Magistrate-IX, Malir Karachi **[Trial Court]** vide order dated 07.07.2025.

2. Brief facts of the case are that Complainant is serving as Security Officer at Bahria Town, who apprehended the present applicant and recovered 25 Kg iron rods from his possession so also one motorcycle bearing No.KEI-2088. Hence, the instant FIR was lodged.

3. Learned counsel for the applicant contends that the sole allegation against the applicant is that he has stolen 25 Kg iron rods from his native place which limits under the jurisdiction of Bahria Town Ltd. It is alleged by the learned counsel for the applicant that the FIR is lodged with malafide intention as the co-villagers are not selling their land to Bahria Town Ltd. and the said Company is causing harassment to the applicant and other

co-villagers. Lastly, he prays for grant of post-arrest bail to the applicant.

4. On the other hand, Complainant has appeared and states that he has no objection for grant of bail to the applicant; however, learned Addl. P.G. has raised objection as stolen motorcycle was also recovered from the applicant.

5. I have considered the arguments of learned counsel for the applicant and learned Addl. P.G. and perused the material with their able assistance.

6. I am of the considered view that so far case property is concerned, according to the applicant, it is for his personal usage and ownership of the said case property can only be determined by the trial Court after recording the evidence. Whereas, prosecution has alleged recovery of stolen motorcycle but learned Addl. P.G. is unable to provide case number and other details of the said motorcycle. It is settled law that for the purposes of deciding bail, lesser punishment shall be considered. In the present case, maximum punishment provides three years which make the case of the applicant in non-prohibitory clause in Section 497 Cr.P.C. Further, the prosecution has not shown apprehension that the Applicant if granted bail will damage the case of prosecution or that he would intimidate or influence the prosecution witnesses.

7. The jurisprudence governing the grant of bail is fundamentally anchored in the principle of reasonableness, requiring a tentative assessment of each case on its own merits and factual matrix. This assessment is not merely procedural but is informed by the broader analogy that, should the accused ultimately be acquitted after prolonged trial proceedings, the criminal justice system does not provide any statutory mechanism for reparation or compensation for the extended period of incarceration endured under unproven charges. It is, therefore, legally and morally untenable to keep an accused person incarcerated indefinitely while awaiting the conclusion of trial, especially when such proceedings may culminate either in conviction or acquittal. In the latter scenario, the absence of

statutory remedies for wrongful or prolonged detention underscores the necessity of bail as the only viable safeguard against irreparable harm.

8. This principle has been consistently recognized and developed by the Superior Courts of Pakistan, which have emphasized the doctrine of *tentative assessment*—a judicial tool that enables courts to evaluate the sufficiency of material available at the bail stage without delving into conclusive findings. Each case must be assessed independently, with due regard to its peculiar facts and circumstances. The Challan has been submitted before the trial and the Applicant is no more required for investigation. Therefore, no fruitful purpose would be achieved while to keep the Applicant into incarceration for an indefinite period of trial. Even the case is based on documentary evidence in shape of cheques, banks record and the Prosecution has no apprehension that the Applicant, if he is released, he might be damaged or tamper with the prosecution's evidence. The Prosecution has not highlighted circumstances, which would indicate that any exceptions to the aforesaid rule as per the said case laws apply in the present case. Under the facts and circumstances of the case in hand, when an investigation has been completed and challan has been submitted before the trial Court, the Applicant in case, he is freed, he cannot tamper with the prosecution evidence nor is there any prior conviction and no apprehension of absconding has been expressed at all. It does not appear that the Applicant's incarceration would serve the cause of justice.

9. Upon conducting a tentative assessment of the available material and examining the statutory framework, it is evident that the alleged offence does not attract the prohibitory clause of Section 497 of the Criminal Procedure Code. In such circumstances, the considerations for grant of bail are to be governed by the settled principles of law and the exercise of judicial discretion. It is a well-established principle that where the offence does not fall within the prohibitory clause of Section 497, Cr.P.C., the grant of bail becomes a rule and its refusal an exception. This legal position has been consistently affirmed by the Hon'ble Supreme Court of Pakistan in

Tariq Bashir and Others v. The State (PLD 1995 SC 34) and Muhammad Tanvir v. The State (PLD 2017 SC 733).

10. In view of the above, instant bail application is allowed. Accordingly, **applicant Muhammad Hashim @ Asim S/o Abu Baker** is granted post-arrest bail subject to furnishing solvent surety in the sum of Rs.50,000/- [rupees fifty thousand] and P.R. bond in the like amount to the satisfaction of the learned trial Court.

11. It is clarified that the observations made hereinabove are tentative in nature and shall not prejudice the trial Court, which shall decide the case strictly on its merits and in accordance with law.

JUDGE

Kamran/PS