

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
AT HYDERABAD**

Criminal Bail Application No.S-496 of 2025

Applicant : Muhammad Sharif son of Haji
Habibullah through M/s. Syed Tariq
Ahmed Shah and Ammar Ahmed,
Advocates

Respondent : The State through Mr. Bashir Ahmed
Almani, Assistant Attorney General,
Pakistan along with SIP-Saddam
Hussain, FIA Crime Circle, Sukkur

Date of Hearing : 16.09.2025

Date of Order : 16.09.2025

ORDER

Jan Ali Junejo, J.- Through this application under Section 497 of the Code of Criminal Procedure, 1898, the applicant/accused Muhammad Sharif seeks post-arrest bail in connection with Crime No. 33/2024 registered at P.S. FIA Crime Circle, Sukkur, for offences punishable under Sections 13 & 14 of the Foreigners Act, 1946, read with Sections 109, 34, 419, 420, 468, 471 of the Pakistan Penal Code, 1860, and Section 5(2) of the Prevention of Corruption Act, 1947. The applicant's initial bail application was dismissed by the learned Special Judge Anti-Corruption (Central), Hyderabad, vide a detailed order dated 08.03.2025, which has led to the filing of the present application before this Court.

2. The FIR was registered on the basis of source information alleging a concerted conspiracy whereby four Afghan nationals, being illegal residents, attempted to fraudulently obtain Pakistani passports. The prosecution's case is that this was achieved through a network of local facilitators, including the present applicant. The specific role attributed to the applicant is that he provided accommodation and facilitation to these Afghan nationals at his hotel in Ali Wahan, Sukkur. The investigation has revealed a more extensive pattern of criminal activity, indicating that the applicant is a habitual facilitator who has previously inserted other Afghan nationals into his own family tree to obtain Computerized National Identity Cards (CNICs) and passports.

3. Learned counsel for the applicant strenuously argued for the grant of bail, contending that: (i) the applicant has been falsely implicated, and the case rests primarily on the statements of co-accused, which is hearsay and inadmissible; (ii) the allegations, even if accepted, at most constitute an offence under Section 14 of the Foreigners Act, which is not within the prohibitory clause of Section 497(1) Cr.P.C., making the grant of bail a rule; (iii) the rule of consistency applies as co-accused Muhammad Yaqoob was granted bail by the learned Trial Court; (iv) the case is based on documentary evidence already in the custody of the FIA, eliminating any apprehension of evidence tampering; and (v) the applicant's continued incarceration amounts to pre-trial punishment, violating his fundamental rights under Articles 9 and 10-A of the Constitution. Lastly, the learned counsel prayed for grant of bail.

4. The learned Assistant Attorney General, assisted by the investigating officer, vehemently opposed the bail application. He argued that the applicant is not a mere abettor but a central figure and a habitual offender in a sophisticated network facilitating illegal immigrants; that the allegations are serious and transcend the simple provision of accommodation, revealing a systematic business of undermining national security and the integrity of the state's identification system; and, that the applicant if released, there is a high likelihood that the applicant, being a seasoned facilitator, will abscond and/or repeat the offence, thus posing a significant threat to the administration of justice and public order. Lastly, the learned A.A.G. prayed for dismissal of bail.

5. I have considered the arguments advanced by the learned counsel for the Applicant as well as the learned A.A.G. and perused the record with their able assistance. A tentative appreciation, as warranted at bail stage, reveals that the plea of parity is the most compelling factor in this case. The learned Trial Court, in its order dated 24.12.2024, granted bail to co-accused Muhammad Yaqoob after specifically noting that the allegations against him were confined and that, at most, only Section 14 of the Foreigners Act was applicable. The role attributed to the present applicant in the present FIR is strikingly similar—that of a facilitator who provided accommodation. The State has failed to demonstrate any such material distinction that would justify the applicant's continued detention while his co-accused enjoys liberty. To deny bail would be a flagrant violation of the rule of consistency. The core allegation against the applicant, as per the FIR, is facilitating illegal foreigners, which prima facie falls under Section 14 of the Foreigners Act, which is indisputably not included in the prohibitory clause of Section 497(1) Cr.P.C. The settled law, reiterated in

countless judgments, is that in non-prohibitory cases, the grant of bail is the rule and refusal is an exception. The onus was on the prosecution to establish exceptional circumstances warranting denial, which they have failed to discharge. The consistent jurisprudence of the superior Courts holds that in such cases, the grant of bail is the rule, and denial the exception. The burden to demonstrate exceptional circumstances justifying pre-trial incarceration rests squarely upon the prosecution, which, in the present case, has not been discharged. Reliance is placed on the dictum laid down by the Honourable Supreme Court of Pakistan in Case of ***Muhammad Amjad Naeem v. The State through Prosecutor General Punjab and another (2025 SCMR 1130)***, wherein it was held that: *“The principle that bail should be granted as a rule and withheld only in exceptional circumstances, particularly in cases involving non-bailable offences, not falling within the prohibitory clause of section 497(1) Cr.P.C., has been developed and applied in numerous judgments of this Court”*.

6. The case against the applicant rests largely on the disclosure statements of co-accused and circumstantial allegations of previous involvement. At this bail stage, such evidence is of a tenuous nature. The alleged previous instances require proof and are a matter for trial. The existence of these disputed allegations, coupled with the fact that the present case is based on documents already in the custody of the FIA, makes this a fit case for “further inquiry” into the guilt of the applicant under Section 497(2) Cr.P.C. The possibility of a false implication cannot be ruled out at this preliminary stage. The entire case is documentary, and the crucial evidence is already in the safe custody of the state. The witnesses are government officials, minimizing any apprehension of their being influenced. There is no concrete evidence on record to suggest that he is a flight risk or that he will tamper with evidence. Mere assertions by the prosecution without substantiation are insufficient to curtail the liberty of a citizen. The Hon’ble Supreme Court has consistently emphasized that bail should not be withheld as a form of punishment. The constitutional guarantee of a fair trial and the protection of liberty under Articles 9 and 10-A demand that pre-trial detention should be the exception, not the norm, especially when the trial may be protracted. The applicant has already been in custody for a significant period, and the investigation is complete. His continued incarceration without a conviction would unjustly punish him.

6. For the foregoing reasons, this Court is of the considered view that the applicant has successfully made out a case for the grant of bail on the formidable grounds of the rule of consistency, the non-prohibitory nature of

the offence, and the need for further inquiry into his guilt. The bail application is allowed. Accordingly, the applicant/accused Muhammad Sharif son of Haji Habibullah is admitted to post-arrest bail in the aforementioned case, subject to his furnishing a solvent surety in the sum of Rs. 100,000/- (Rupees One Hundred Thousand Only) and a Personal Recognizance (P.R.) Bond in the like amount to the entire satisfaction of the learned Trial Court. It is clarified that the observations made herein are tentative and prima facie in nature, confined exclusively to the decision of this bail application, and shall not prejudice or influence the learned Trial Court in the final adjudication of the case on merits. These are the detailed reasons of the short order announced on 16.09.2025.

JUDGE