THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2113 of 2025

Applicants	:	Ahsan Ali, Akbar Ali Memon and Sikandar Ali Memon sons of Muhammad Mitthal Memon through Mr. Masood Ahmed Junejo, Advocate
Respondent	:	The State, through Ms. Seema Zaidi, Additional Prosecutor General, Sindh
Date of hearing	:	22.10.2025
Date of decision	:	22.10.2025

O R D E R

Jan Ali Junejo, J.- By this Criminal Bail Application, the Applicants Ahsan Ali, Akbar Ali Memon, and Sikandar Ali Memon, seek post-arrest bail in case FIR No. 221 of 2025, registered at Police Station Kalakot, Karachi, for offences punishable under Sections 411, 412, and 34, Pakistan Penal Code (PPC). Their previous application for the same relief was declined by the learned Xth Additional Sessions Judge, Karachi South, vide order dated 07.07.2025.

2. The prosecution case, as set out in the FIR, is that on 01.07.2025 at about 2130 hours, ASI Qaiser Mehmood of Police Station Kalakot, while on patrol duty along with subordinate staff, received spy information that three persons were standing outside a *kabaari* (Junk/Salvage-dealer) Shop in Street No.12, Allama Iqbal Colony, with bags containing stolen motorcycle parts allegedly intended for sale. Acting upon the information, the police party reached the pointed location and apprehended the present Applicants, namely Ahsan Ali, Akbar Ali Memon, and Sikandar Ali Memon, sons of Muhammad Mitthal Memon, allegedly in possession of six plastic bags containing various motorcycle parts. Upon inspection, certain parts were found to correspond, through CPLC verification, to motorcycles reported stolen or snatched in different cases registered at P.S. Aziz Bhatti and P.S. Hyderi Market. The Applicants allegedly failed to produce any documentary proof of ownership or lawful possession, whereupon the property was seized and the Applicants were arrested on the spot. Consequently, FIR No. 221 of 2025 was registered at P.S. Kalakot under Sections 411, 412, and 34, P.P.C.

3. Learned counsel for the Applicants contends that the Applicants are innocent and have been falsely implicated with mala fide intention. He argues that the alleged recovery was effected without the association of any independent witness, despite the fact that the area is densely populated. He submits that the alleged recovery is foisted, and the prosecution story is artificial and highly doubtful. He further contends that the offences under Sections 411 and 412, P.P.C., have distinct legal ingredients and cannot simultaneously apply to the same set of facts. He argues that it requires evidence at trial to determine which of these offences, if any, is attracted to each Applicant. He submits that the case, therefore, falls within the ambit of further inquiry under Section 497(2), Cr.P.C. He also argues that the alleged offence does not fall within the prohibitory clause of Section 497, Cr.P.C., hence, grant of bail is a rule and refusal an exception.

4. Conversely, learned Additional Prosecutor General opposes the bail application and contends that the Applicants are specifically named in the F.I.R. She argues that a huge quantity of stolen property was recovered from their possession, and the police officials had no reason to falsely implicate them. She further submits that the nature of the recovery prima facie connects the Applicants with the commission of the offence. She, therefore, prays for rejection of the bail application.

5. I have considered the arguments advanced by the learned counsel for the Applicants and the learned Additional Prosecutor General, and have perused the record with their able assistance. From a tentative assessment, it appears that the Applicants have been charged under Sections 411 and 412, P.P.C., which, though similar in nature, are distinct and mutually exclusive offences having different legal ingredients. Section 411, P.P.C., deals with the offence of dishonestly receiving stolen property, whereas Section 412, P.P.C., pertains to dishonestly receiving property stolen in the commission of a dacoity. To establish an offence under Section 411, P.P.C., the prosecution must prove:

(i) that the property in question was *stolen property*;

(ii) that the accused *received or retained* such property; and

(iii) that he did so *dishonestly*, knowing or having reason to believe that the property was stolen.

In contrast, the ingredients of Section 412, P.P.C., are:

(i) that the property was *stolen during the commission of a dacoity*;

(ii) that the accused *received or retained* such property;

(iii) that he did so *dishonestly*, knowing or having reason to believe that it was transferred by the commission of a dacoity; and

(iv) that he had *knowledge of the offence of dacoity* connected with such property.

The distinction between the two provisions is, therefore, qualitative, Section 411 applies to *stolen property in general*, whereas Section 412 specifically applies to *property stolen during a dacoity*. Consequently, where the property is not shown to have been obtained through dacoity, the application of Section 412, P.P.C., would be misconceived. Conversely, where credible evidence establishes a nexus between the property and the commission of a dacoity, Section 412, P.P.C., would rightly be attracted. Thus, to bring a case within the purview of Section 411, P.P.C., the prosecution must establish that the accused not only *dishonestly received or retained stolen property* but also *knew or had reason to believe* the same to be stolen. Similarly, to attract Section 412, P.P.C., the prosecution must further prove that the property was stolen in a dacoity and that the accused *knew or had reason to believe* it was so obtained, or that he *received it from a person* known or reasonably believed to be a *member of a gang of dacoits*.

6. In the present case, the record reflects that certain recovered motorcycle parts were linked through CPLC to various cases registered at different police stations, one allegedly pertaining to snatching, while others related to theft. It remains to be determined, through proper evidence at trial, whether any of the recovered property was stolen in the course of a dacoity, thereby attracting the provisions of Section 412, P.P.C., or whether it merely constitutes stolen property falling within the ambit of Section 411, P.P.C. The precise applicability of these provisions to the individual Applicants can only be ascertained after recording evidence from both sides. It is well settled that at the bail stage, this Court is not required to record findings regarding guilt or to conclusively determine which specific offence is made out. The matter, therefore, squarely falls within the ambit of “further inquiry” as contemplated under Section 497(2), Cr.P.C. In similar circumstances, this Court granted bail to the accused in a case where it was not clearly established whether Section 411, P.P.C. or Section 412, P.P.C. was attracted. Reference may be made to the case of ***Farooque Ahmed v. The State (2007 P.Cr.L.J. 345)***, wherein it was observed that: “*The allegation against the applicant is that he was found in possession of the car. It was further alleged in the F.I.R. that the applicant along with four other accomplices used to rob cars from Karachi. While registering a case under section 412, P.P.C. it is necessary to show not*

only that the accused was in possession of the robbed property but further that he knew or had reason to believe that the property had been transferred by the commission of the dacoity. The offence under section 412, P.P.C. is much more serious than offence under section 411, P.P.C. Where there is no evidence to show that the accused had knowledge that the property in possession is subject-matter of the dacoity he cannot be tried and convicted under section 412, P.P.C."

7. Furthermore, the record does not indicate the presence of any independent witness to corroborate the police version, despite the alleged recovery having been effected in a populated locality, which further weakens the prosecution's case at this preliminary stage. The available material suggests that, at the most, the alleged offence may fall within the ambit of Section 411, P.P.C., which does not attract the prohibitory clause of Section 497, Cr.P.C. It is also a settled principle of law that in cases not falling within the prohibitory clause, the grant of bail is a rule and its refusal an exception, as held by the Honourable Supreme Court of Pakistan in the cases of ***Tariq Bashir and 5 others v. The State (PLD 1995 SC 34)*** and ***Muhammad Tanveer v. The State (PLD 2017 SC 733)***. The prosecution has not brought on record any material to show that the Applicants are desperate, hardened, or dangerous criminals whose release would endanger society or prejudice the proceedings. Their continued detention, therefore, would serve no meaningful purpose, especially when their case calls for further inquiry within the scope of Section 497(2), Cr.P.C.

8. In view of the foregoing discussion, I am of the tentative view that:

- *The ingredients of Sections 411 and 412, P.P.C., are distinct and mutually exclusive;*
- *The prosecution's evidence is yet to determine which of the said offences, if any, is attracted to each of the Applicants; and*
- *The case, therefore, calls for further inquiry within the meaning of Section 497(2), Cr.P.C.*

9. For the foregoing reasons, the Applicants have made out a case for grant of post-arrest bail. Accordingly, Criminal Bail Application No. 2113 of 2025 is allowed, and the Applicants, namely: (i) Ahsan Ali son of Muhammad Mitthal Memon, (ii) Akbar Ali Memon son of Muhammad Mitthal Memon, and (iii) Sikandar Ali Memon son of Muhammad Mitthal Memon, are admitted to post-arrest bail, subject to their furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand only) each and a P.R. bond in the like amount to the satisfaction of the learned Trial Court. It is, however, clarified that if the Applicants misuse the concession of bail

or abscond during trial, the learned Trial Court shall be at liberty to cancel their bail in accordance with law.

10. The observations made herein are tentative in nature and confined solely to the purpose of this Order. They shall not prejudice or influence the learned trial Court while deciding the case on merits. These are the detailed reasons of the Short Order dated: 22-10-2025.

JUDGE

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