IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. S–1234 of 2025

Applicant	:	Sumair Hyder S/o Amjad Hussain, by caste Qureshi *Through* Mr. Muhammad Uzair Shaikh, Advocate
The State	:	*Through* Mr. Mansoor Ahmed Shaikh, DPG
Date of hearing	:	02.02.2026
Date of order	:	02.02.2026
Date of reasons.	:	03.02.2026

O R D E R

KHALID HUSSAIN SHAHANI, J.— Applicant Sumair Hyder, seeks the concession of post-arrest bail in respect of Crime No.136 of 2024, registered at Police Station Rohri, District Sukkur, for offences ostensibly falling under Sections 380, 414, 413 and 457 of the Pakistan Penal Code, 1860, read with Section 9 of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979. The earlier plea for bail preferred by the applicant stood declined by the learned Additional Sessions Judge-IV (Hudood), Sukkur, vide order dated 15.12.2025.

2. The prosecution narrative, tersely encapsulated, is that on 19.06.2024 at about 08:00 p.m., the applicant, in concert with co-accused Aijaz Ali, is alleged to have perpetrated house-breaking and committed theft from the residential premises of the complainant Ghulam Mustafa, situated at Wichora Chowk, Memon Muhalla, Rohri. It is alleged that, availing themselves of the complainant's absence on account of his participation in Eid festivities with his family, the accused surreptitiously entered the house, forced open the lock of a cupboard and abstracted therefrom a bag containing 32 tolas of gold ornaments belonging to the complainant's family. Upon their alleged departure, they were purportedly seen fleeing by the complainant's nephew and another relative, whereafter the complainant claims to have discovered the household articles in disarray and the gold ornaments missing. It is further

alleged that on confrontation the applicant admitted the occurrence and disclosed that the stolen gold had already been alienated to a goldsmith for consideration, whereupon the FIR came to be lodged at Police Station Rohri.

3. Learned counsel for the applicant has, with considerable vehemence, argued that the applicant is innocent and that his implication is the product of mala fide animus rooted in admitted close consanguinity and subsisting disputes pertaining to partition of family property, which have allegedly supplied a ready and potent motive for false implication. It has been urged that the occurrence, by the prosecution's own showing, is essentially unwitnessed in the sense that no person claims to have actually observed the act of theft; rather, the prosecution edifice rests on conjecture, suspicion and derivative assertions. Learned counsel contends that the FIR was set in motion after an inordinate and unexplained hiatus of about eleven days, which, on settled jurisprudential principles, creates ample space for consultation, deliberation and embellishment. He further submits that the putative star witness, Waseem Abbas, who allegedly furnished the earliest information, has been conspicuously withheld and not arrayed as a prosecution witness in the report under Section 173, Cr.P.C., thus inviting an adverse presumption against the prosecution. It is additionally argued that no incriminating recovery has been effected from the applicant despite his incarceration extending over eighteen months; that the alleged alienation of 32 tolas of gold for a meagre sum of Rs.6,000/- is intrinsically implausible and incongruent with ordinary human conduct; that the co-accused have been relegated to Column No.II of the challan, materially eroding the prosecution version; that no forensic, fingerprint or scientific corroboration has been procured; and that, in any event, the matter does not inexorably fall within the prohibitory limb of Section 497, Cr.P.C. He finally submits that, cumulatively, the case squarely attracts the doctrine of further inquiry within the contemplation of Section

497(2), Cr.P.C., and that continued incarceration of the applicant would amount to an anticipatory infliction of punishment.

4. Conversely, learned DPG for the State has opposed the bail, asserting that the applicant is specifically named in the FIR with a clear attribution of house-breaking and theft of gold ornaments weighing about 32 tolas from the complainant's residence. He contends that, being a close relative, the applicant was fully cognizant of the complainant's absence and exploited such knowledge to facilitate the commission of the offence. It is submitted that the ocular account furnished by the complainant and by those witnesses who allegedly saw the applicant in flight from the locus in quo stands buttressed by the investigative material; that the delay in lodging the FIR stands sufficiently explained on the premise of endeavors for recovery of the stolen property; and that mere non-recovery, per se, does not confer an indefeasible right to bail. Learned DPG further points out that during investigation the matter was brought under Section 9 of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979, which, according to him, attracts the prohibitory clause and constitutes a grave offence against society. He maintains that no credible mala fide has been demonstrated on the part of the complainant and that adequate incriminating material exists to prima facie connect the applicant with the alleged occurrence, disentitling him to the relaxation of post-arrest bail.

5. I have heard learned counsel for the parties at considerable length and have meticulously examined the available record. At the bail stage, it is neither desirable nor permissible to embark upon a meticulous dissection of evidence; the judicial remit is confined to an assessment whether, on the face of the material collected, there are reasonable grounds for believing that the accused is guilty of the alleged offence or whether the case falls within the compass of further inquiry as envisaged by Section 497(2), Cr.P.C.

6. The record reveals that the alleged occurrence took place on 19.06.2024 at about 08:00 p.m., whereas the FIR was lodged on 01.07.2024, thus reflecting an unexplained temporal gap of roughly eleven days. Juridical consensus in our criminal jurisprudence is that prompt reporting imbues the prosecution story with an aura of spontaneity and veracity, whereas unexplained delay tends to generate a presumption of deliberation and possible embroidery. In the present matter, the police station is situated at a relatively short distance from the locus delicti, yet no cogent or plausible explanation for such inordinate delay has been put forth on record, which prima facie impairs the credibility of the prosecution version and furnishes a substantial ground for further inquiry. Reliance in this regard has appropriately been placed on the dictum in *Mohammad Ishaq v. The State* (2007 SCMR 108), wherein the apex Court treated unexplained delay in conjunction with established enmity as a factor militating against the prosecution.

7. It is further an admitted position that, during investigation, cognizance was taken under Section 9 of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979. However, the extant material does not demonstrate fulfilment of the stringent prerequisites of *Hadd* contemplated by Section 7, which inter alia demands the testimony of two adult Muslim male eye-witnesses of unimpeachable character whose probity stands established through *tazkiyah-ul-shahood*. No such witnesses have been cited as having actually seen the act of theft in the manner required for the imposition of *Hadd*. In such circumstances, at its highest, the matter would be cognizable as an offence under Ta‘zir, which does not entail an absolute embargo on the grant of bail and remains amenable to the ordinary principles under Section 497, Cr.P.C.

8. An equally significant legal dimension arises from the explicit mandate of Section 10 of the Offences Against Property (Enforcement of Hudood)

Ordinance, 1979, which delineates categories of cases wherein the penalty of Hadd shall not be imposed. Clause (a) thereof categorically excludes, inter alia, situations where the offender and the victim stand in specified close kinship, such as brothers, sisters and their children, from the operation of Hadd. In the present case, it is admitted on record, and not controverted by the prosecution, that the applicant and the complainant are close relatives, thus squarely attracting the statutory exception. Consequently, even if the prosecution allegations are hypothetically accepted at face value, the imposition of Hadd would be legally proscribed, with the result that the alleged offence would necessarily fall outside the strict Hudood regime and be triable only as Ta‘zir, thereby materially attenuating the supposed rigor of the prohibitory clause under Section 497, Cr.P.C.

9. The challan further discloses that co-accused Aijaz Ali and Rashid Ali, though specifically nominated in the FIR with roles of participation in the alleged offence and disposal of the purportedly stolen property, have nevertheless been placed in Column No. II as innocent. Such selective retention of the applicant alone, while exonerating similarly nominated co-accused at the investigative stage, prima facie introduces a serious element of discrimination and arbitrariness, which weakens the prosecution case and in itself calls for deeper judicial scrutiny at trial.

10. Yet another salient feature is the complete absence of recovery from the applicant. Despite the lapse of a considerable period since his arrest, neither the allegedly stolen 32 tolas of gold ornaments nor any incriminating article has been recovered from his possession or at his instance. The assertion that such a substantial quantum of gold was disposed of for a paltry sum of Rs.6,000/- is, on its face, antithetical to common sense and normative human conduct, thereby casting further doubt on the prosecution narrative.

11. It is also not in dispute that the applicant was arrested on 05.07.2024 and has remained incarcerated for eighteen months, during which the trial has not registered any meaningful or substantial progress, and the delay is not shown to be attributable to any dilatory tactic on his part. Prolonged pre-trial detention, without adjudication on culpability, offends the salutary principle that liberty is the norm and incarceration an exception, and risks converting the process itself into a form of pre-trial punishment.

12. Moreover, the prosecution case itself acknowledges that the complainant's nephew, Waseem Abbas, was the person who allegedly first heard the noise and conveyed the information to the complainant, yet his name does not figure in the list of witnesses appended to the police report under Section 173, Cr.P.C. The deliberate withholding of such a material witness, who commands a pivotal position in the initial narrative, legitimately gives rise to an adverse inference against the prosecution and further fortifies the defense plea that the matter warrants deeper scrutiny.

13. The admitted close relationship between the parties and the presence of antecedent disputes regarding partition of family property, viewed in the totality of circumstances, cannot be brushed aside as legally irrelevant. While mere kinship or prior discord does not ipso facto demolish the prosecution case, it certainly introduces a plausible hypothesis of false implication, particularly when the case is already tainted by unexplained delay, non-recovery, omission of a material witness and selective exoneration of co-accused.

14. In view of the cumulative effect of the aforementioned factors including, the unexplained delay in lodging the FIR, non-fulfilment of Hadd requirements under Section 9, the statutory bar on Hadd in view of Section 10(a) due to close kinship, placement of co-accused in Column No. II, total absence of recovery, protracted incarceration of the applicant without

substantial progress in trial, and withholding of a material witness, I am constrained to hold that the case against the applicant undeniably falls within the ambit of further inquiry as contemplated by Section 497(2), Cr.P.C.

15. Resultantly, post-arrest bail is allowed. The applicant, Sumair Hyder, is admitted to bail, subject to his furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand only) together with a personal recognizance bond in the like amount to the satisfaction of the learned Trial Court.

16. It is, however, expressly observed that the foregoing observations are purely tentative, confined to the disposal of this bail petition, and shall not prejudice or fetter the learned Trial Court in any manner in its ultimate appraisal of the evidence and adjudication of the case strictly on its own merits.

17. The instant bail application had earlier been allowed in open Court vide short order dated 02.02.2026; these are the detailed reasons in support thereof.

J U D G E