

THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2846 of 2025

Applicant : Imtiaz Ahmed Shaikh son of Saleh Muhammad Shaikh through Mr. Rasheed Ashraf Mughal, Advocate

The State : Through Mr. Sharaf-u-Din Jamali, Assistant Attorney General, Pakistan along with SI-Mehran Khan, FIA, CBC, Karachi

Date of hearing : 18.11.2025

Date of decision : 18.11.2025

O R D E R

Jan Ali Junejo, J. - The applicant, Imtiaz Ahmed Shaikh son of Saleh Muhammad Shaikh, has invoked the jurisdiction of this Court by filing the instant post-arrest bail application under Section 497, Cr.P.C., seeking release on bail in FIR No. 15 of 2025, registered on 29.09.2025 at Police Station FIA, (CBC), Karachi, for offences punishable under Sections 4 and 23 of the Foreign Exchange Regulation Act, 1947 read with Section 109, P.P.C. It is pertinent to note that prior to approaching this Court, the applicant had moved a post-arrest bail application before the learned District & Sessions Judge, Malir, Karachi, bearing Bail Application No. 4667 of 2025, which came to be dismissed vide order dated 13.10.2025. The applicant is presently in judicial custody and has now approached this Court for redressal.

2. The prosecution case, in brief, is that on the basis of Enquiry No. 92 of 2025, registered on secret information, a raiding team of FIA reportedly intercepted the applicant at the parking area of Jinnah International Airport, Karachi, where he was allegedly found sitting in a motor vehicle. Upon search of his person and vehicle, foreign currency comprising UAE Dirhams, Saudi Riyals, and US Dollars, along with two mobile phones and the vehicle, was allegedly recovered. It is further alleged that upon inquiry, the applicant disclosed that he was present for the purpose of delivering foreign currency to a party and admitted involvement in illegal sale and purchase of foreign exchange without authorization from the State Bank of Pakistan. On these allegations, the instant FIR was registered and the applicant was arrested.

3. Learned counsel for the applicant argues that mere possession of foreign currency does not constitute an offence in the absence of credible proof of illegal transaction; he contends that the applicant has produced purchase receipts which, *prima facie*, establish lawful acquisition of the currency. He submits that no buyer or seller has been arrested, identified, or produced by the prosecution, and no independent public witness was associated despite the alleged recovery from a public place. He asserts that any alleged confession before FIA officials is inadmissible in evidence, and that serious legal infirmities exist due to non-compliance with Section 19 of FERA and lack of mandatory authorization. He further maintains that the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C., attracting the principle of further inquiry under Section 497(2) Cr.P.C., as consistently held by the Honourable Supreme Court and High Courts. Lastly, he prays for grant of bail to the applicant.

4. Learned Assistant Attorney General, assisted by the Investigating Officer, argues in opposition that a huge quantity of foreign currency was recovered from the possession of the applicant, and he contends that the applicant himself admitted involvement in unlawful dealing. He further submits that the applicant is *prima facie* connected with the commission of the offence and, therefore, is not entitled to the concession of bail. Lastly, he prays for dismissal of the bail application.

5. I have considered the arguments advanced by the learned counsel for the parties and examined the record with their able assistance. At the bail stage, this Court is not required to conduct a detailed appraisal of evidence; however, it is obligated to see whether reasonable grounds exist to believe that the accused is guilty of the alleged offence or whether the case calls for further inquiry within the meaning of Section 497(2), Cr.P.C. A bare reading of Section 4 of the Act reveals that mere possession of foreign currency is not criminalized; rather, the section specifically prohibits “dealing” in foreign exchange, including buying, selling, transferring, or entering into exchange transactions without authorization from the State Bank of Pakistan. The emphasis of the provision is, therefore, on a “transaction” and not on possession *simpliciter*. Consequently, an offence under Section 4 is attracted only when the prosecution establishes the identity of the buyer or seller, the nature of the transaction, proof of exchange activity, and some financial or commercial trail demonstrating transfer or delivery. In the present case, the prosecution has failed to produce any customer, buyer, sale consideration, record of exchange, ledger, or communication establishing

any transaction. Mere recovery of foreign currency, without proof of an unlawful transaction, does not fulfil the ingredients of Section 4, thereby rendering its applicability doubtful at the bail stage and clearly attracting the doctrine of further inquiry. Section 23 of the Act does not create an independent offence; it merely prescribes the punishment upon proof of a contravention of Section 4. Therefore, the penal consequence under Section 23 arises only where a violation of Section 4 is *prima facie* established. Where the applicability of Section 4 itself is doubtful, Section 23 cannot operate independently. FERA being a regulatory statute governing financial discipline, criminal liability thereunder arises only when unlawful “dealing” in foreign exchange is conclusively shown. Possession without corroborative material is insufficient to presume guilt. The law further demands proof of financial trail, transactional linkage, benefit derived, and identity of the recipient, none of which is available on record. Moreover, the prosecution has failed to produce any notification of authorization, name of the designated officer, jurisdictional certificate, or sanction from the State Bank of Pakistan, which is a mandatory prerequisite. In the absence of such authorization, the prosecution becomes legally infirm. Since FERA imposes restrictions on personal liberty, its provisions require strict interpretation. In the present case, there is no transaction, no proven dealing, no exchange activity, and no identified customer; thus, the requisite *mens rea* and the basic ingredients of the offence are *prima facie* not established. This, therefore, squarely calls for further inquiry at the bail stage.

6. This Court, therefore, *prima facie* holds that the ingredients of Section 4 of the Foreign Exchange Regulation Act, 1947 are not made out. Since Section 23 is merely a consequential penal provision, it necessarily collapses with the failure of Section 4. There exists no statutory bar rendering the offence non-bailable; hence, the case squarely falls within the ambit of Section 497(2), Cr.P.C., whereby grant of bail becomes a legal right rather than a concession. As the prosecution has failed to establish the mandatory ingredients of Section 4 of the Act, the penal provision under Section 23 cannot operate independently, and consequently, the present case is clearly one of further inquiry.

7. Admittedly, the offences under Sections 4 and 23 of FERA, 1947 are not punishable with death, imprisonment for life, or imprisonment for ten years; therefore, they do not fall within the prohibitory clause of Section 497, Cr.P.C. It is a settled principle of law that in non-prohibitory offences, bail is the rule and jail is the exception, unless extraordinary circumstances exist. Any alleged confession made before FIA officials

carries no evidentiary value under the law, as confessional statements must be recorded before a Magistrate to attain legal sanctity. Hence, the prosecution cannot build its entire case upon such a statement. Moreover, the alleged recovery was effected from a public place, yet not even a single independent witness was associated, a lapse which seriously dents the credibility of the prosecution case and strengthens the plea of further inquiry. The applicant has also placed on record purchase receipts which, *prima facie*, justify lawful possession; whether such documents are genuine or otherwise is a matter for trial. At the bail stage, the benefit of doubt must necessarily go to the accused.

8. The applicant is neither shown to be a previous offender nor involved in any similar case; there is no allegation of absconson, nor is he demonstrated to be a threat to prosecution witnesses. All witnesses are officials of FIA and the evidence is documentary in nature; therefore, no reasonable apprehension of tampering is made out. Considering the non-prohibitory nature of the offence, absence of independent corroboration, legally inadmissible confession, availability of purchase receipts on record, non-identification of any buyer or seller, and the clear case of further inquiry under Section 497(2), Cr.P.C., I am of the considered view that the continued incarceration of the applicant is not justified.

9. For the reasons recorded hereinabove, the instant Criminal Bail Application is allowed. The applicant, Imtiaz Ahmed Shaikh son of Saleh Muhammad Shaikh, is admitted to post-arrest bail in FIR No. 15/2025, registered at Police Station FIA CBC, Karachi, under Sections 4 and 23 of the Foreign Exchange Regulation Act, 1947 read with Section 109, P.P.C., subject to his furnishing surety in the sum of Rs. 500,000/- (Rupees Five Lac Only) and personal recognizance bond in the like amount, to the satisfaction of the learned Trial Court.

10. The observations herein are tentative and confined to the decision of bail. The trial Court shall not be influenced thereby and shall adjudicate strictly on the evidence led before it. The application stands allowed in the above terms. These are the detailed reasons of the Short Order dated: 18-11-2025.

JUDGE