

THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 1345 of 2026

a/w

Criminal Bail Application No. 1346 of 2026

Applicant : Muhammad Asghar
[in Cr. B.A No.1345/2026] Son of Ghulam Rasool
Through: Tahir Hussain, advocate

Applicant : Abdul Ghaffar
[in Cr. B.A No.1346/2026] S/o. Aziz ur Rehman
Through Mr. Aqib Ali, advocate

The State : Through Muhammad Ishaque Rajper
Assistant Attorney General.

Date of hearing : 16.06.2026.

Date of Order : 16.06.2026.

ORDER

Jan Ali Junejo, J.- By this common order, I intend to decide the above captioned bail applications, as they arise out of same incident, filed under Section 497 Cr.P.C. by the applicant Muhamad Asghar son of Ghulam Rasool [in Cr. B. A No.1345/2026 and Abdul Ghaffar son of Aziz ur Rehman [in Cr. B. A No. 1346/2026], who seek their release on bail in connection with FIR No.26 of 2026 registered at Police Station Commercial Banking Circle, Karachi for the offences punishable under Sections 4/23 FER Act, 1947 R/w Section 109 PPC. The applicants have approached this Court being aggrieved by the order dated 30.04.2026, passed by the learned Sessions Judge, Karachi West whereby their respective bail applications were declined.

2. The prosecution case, in brief, is that on the basis of Enquiry No. 64/2026 dated 15.04.2026 initiated at FIA CBC Karachi under the approval of the Deputy Director on the basis of Fard-e-Maqbozgi dated 14.04.2026, prepared by ASI Ayaz Ali Baloch of Mochko Police Chowki, reflecting that during routine checking at Mochko, a Toyota Fielder bearing registration No. AYC-169 was intercepted, being driven by Muhammad Asghar with passengers including Abdul Ghaffar and his family members, wherein upon personal search conducted by police officials, various personal belongings and a bag containing 197 bundles of Iranian currency (each bundle containing 100 million IRR, totaling 19.7 billion IRR) were

recovered, subsequently handed over to FIA CBC Karachi through proper handing and taking over procedure. During inquiry, Abdul Ghaffar failed to furnish any lawful justification for possession of the said foreign currency and disclosed that the same was handed over to him in Quetta by one Mohib-ur-Rehman for transportation to Karachi against monetary consideration, while the latter also allegedly arranged travel and logistics. It was further revealed that the currency was being transported in the said vehicle along with family members when it was intercepted at Mochko. On the basis of facts so collected, prima facie involvement of Abdul Ghaffar and Muhammad Asghar in illegal dealing/transportation of foreign currency in collusion with each other was established, attracting provisions of Sections 4/23 of the Foreign Exchange Regulation Act, 1947 (as amended) read with Section 109 PPC, whereupon the case was registered against the nominated accused persons with their formal arrest, while the role of Mohib-ur-Rehman is kept under investigation for further determination. On these allegations, the instant FIR was registered and the applicant was arrested.

3. Learned counsel for the applicant in Cr. Bail Application No. 1345 of 2026 submits that the applicant is innocent and has been falsely implicated in the present case with mala fide intentions. He contends that the alleged recovery consists only of foreign currency, which is not a prohibited item per se, and that no material has been produced to establish its use for any unlawful purpose. According to him, mere possession of foreign exchange does not constitute an offence under the Foreign Exchange Regulation Act, 1947 unless linked with any prohibited transaction. He further argues that the applicant was arrested on 14.04.2026 but was produced before the learned Magistrate on 16.04.2026 in violation of Sections 60 and 61 Cr.P.C. and Article 10-A of the Constitution. Learned counsel submits that no independent witness has been associated with the alleged recovery, despite the incident having occurred in a populated area, nor has any CCTV footage been produced, thereby rendering the prosecution case doubtful. Reliance is placed upon an unreported judgment of the Hon'ble High Court, wherein it was held that mere possession of foreign currency does not attract criminal liability under Section 4(i) of the Foreign Exchange Regulation Act, 1947 unless it is shown to be connected with any prohibited act. He further contends that none of the essential ingredients of Sections 4 and 23 of the Act read with Section 109 P.P.C. are prima facie attracted, nor is there any evidence of

any unlawful transaction or dealing. It is also argued that the element of mens rea is lacking and that, according to the FIR itself, the currency was allegedly handed over to the applicant by another person, making the matter one of further inquiry. Learned counsel further submits that the alleged offences do not fall within the prohibitory clause of Section 497 Cr.P.C. He adds that the applicant, a taxi driver by profession, was transporting passengers from Quetta to Karachi when he was apprehended during routine checking and, upon refusal to meet an unlawful demand, was falsely implicated. Maintaining that no incriminating material has been recovered from the applicant and that the alleged recovery has been foisted upon him, learned counsel prays for grant of bail.

4. Learned counsel for the applicant in Cr. Bail Application No. 1346 of 2026 submits that the applicant is innocent and has been falsely implicated in the present case with mala fide intentions. He contends that the alleged recovery consists solely of foreign currency, which is not a prohibited item per se, and that no material has been produced to establish its use for any unlawful purpose. According to him, mere possession of foreign exchange does not constitute an offence under the Foreign Exchange Regulation Act, 1947 unless linked with any prohibited transaction. He further contends that none of the essential ingredients of Sections 4 and 23 of the said Act read with Section 109 P.P.C. are prima facie attracted, the element of mens rea is absent and that, according to the FIR itself, the currency was allegedly handed over to the applicant by another person, making the matter one of further inquiry. Learned counsel further submits that the alleged offences do not fall within the prohibitory clause of Section 497 Cr.P.C. He adds that the applicant was travelling to Karachi with his family for medical consultation of a family member and to meet relatives before proceeding for Hajj along with his parents when he was apprehended by the police. Maintaining that no incriminating material has been recovered from the applicant, that the alleged recovery has been foisted upon him, and that he has no criminal antecedents, learned counsel prays for grant of bail to the applicant.

5. 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 applicants themselves admitted involvement in unlawful dealing. He

further submits that the applicants are 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 applications.

6. 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. 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.

7. 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.

8. 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.

9. The applicants are neither shown to be a previous offenders nor involved in any similar case; there is no allegation of absconion, nor are they 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, 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 applicants are not justified.

10. For the reasons recorded hereinabove, the these Criminal Bail Applications are allowed. The applicant Muhammad Asghar son of Ghulam Rasool [in Cr. B.A No.1345/2026] and Abdul Ghaffar son of Aziz ur Rehman [in Cr. B. A No. 1346/2026] are admitted to post arrest bail in

case bearing crime No.26/2026, under Section 4/23 FER Act, 1947 R/w Section 109 PPC registered at PS Commercial Banking Circle, Karachi subject to their furnishing solvent surety in the sum of Rs.1,00,000/- [Rupees One Lac only] each and PR bond in the like amount to the satisfaction of the learned trial court.

11. 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: 16-06-2026.

JUDGE