

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1611 of 2026

Applicants : 1. Rooh Allah S/o. Syed Wali
2. Taj Wali Khan S/o. Niaz Wali Khan
Through Ms. Nida Zafar Khokhar,
advocate

Complainant : Ikramuddin S/o. Wali Muhammad
Through Mr. Qamar Abbas Abbasi,
advocate

The State : Through Ms. Amna Iqbal,
Assistant Prosecutor General Sindh

Date of hearing : 24.06.2026

Date of Order : 24.06.2026

ORDER

Jan Ali Junejo, J:-- Through this order, I intend to decide the instant post-arrest bail application filed under Section 497 Cr.P.C. by the applicants namely Rooh Allah son of Syed Wali and Taj Wali Khan son of Niaz Wali Khan, who seek their release on bail in connection with FIR No.30 of 2026 registered at Police Station KW&SC, Karachi for the offences punishable under Sections 430/427/341/34 PPC R/w Section 39(2) of Schedule-II Water and Sewerage Act, 2023. The applicants have approached this Court being aggrieved by the order dated 20.05.2026 passed by the learned Tribunal of Karachi Water and Sewerage Corporation at Karachi whereby their bail application was declined.

2. Briefly stated, the prosecution case, as reflected in the FIR is that the complainant Akram-u-Din son of Wali Muhammad resident of the address mentioned in Column No. 2 and serving as a Supervisor at Karachi Water & Sewerage Corporation (KW&SC), stated that upon receipt of secret information, he came to know that certain persons were carrying out illegal commercial boring/drilling activities near Pahlwan Hotel, House No. D-71, Block B, North Nazimabad, Karachi. Thereafter, he, along with Sub-Soil XEN Mr. Subhan Akhter and other staff members, proceeded to the said location for inspection. Upon arrival, certain persons were found actively engaged in boring/drilling work using

machinery and equipment. Consequently, KW&SC Police Officer SIP Mushtaque Ahmed alongwith other staff members apprehended them at about 0030 hours. During inspection and inquiry at the spot, it transpired that the said boring/drilling activity was being carried out without lawful permission or authorization and was causing obstruction to and interference with the water system/installations of KW&SC. Upon inquiry, the apprehended persons disclosed their names as (1) Rooh Allah son of Syed Wali and (2) Taj Wali Khan son of Niaz Wali Khan. Rooh Allah disclosed himself to be the owner of the machinery, whereas Taj Wali Khan stated that he was working as a helper. They further disclosed that one Asif son of an unknown person, had instructed them to carry out the said activity. Both accused were arrested at the spot and all necessary legal formalities were completed there. Thereafter, the complainant alongwith XEN Mr. Subhan Akhter, signed the relevant documents as witnesses and approached the police station for registration of the FIR, alleging that the arrested persons, along with their co-accused Asif son of an unknown had committed offence of illegal boring/drilling work, hence, this FIR.

3. Learned counsel for the applicant contended that the applicants are innocent and have been falsely implicated in the present case in collusion with the complainant and the police with mala fide intention, although they have no nexus whatsoever with the alleged offence. He contends that the learned Tribunal has misapprehended the law by failing to appreciate that Section 38 of the KW&SC Act, 2023, expressly bars the registration of an FIR except upon a written complaint made by an officer duly authorized by the Corporation, and, therefore, the registration of the instant FIR is in sheer violation of the mandatory provisions of the said Act, rendering the very initiation of criminal proceedings illegal, unlawful, and without lawful authority. He further argues that Section 38 specifically provides that no Court, other than the Tribunal constituted under the Act, shall take cognizance of the offences mentioned in Schedules I and II except upon such written complaint, whereas the learned Tribunal also failed to consider the overriding effect of Section 45 of the KW&SC Act, 2023, over all other laws, including the Code of Criminal Procedure. Learned counsel further submits that the applicants are merely innocent labourers who were conducting boring for domestic

purposes, and neither the FIR nor any material available on record discloses that they punctured, damaged, or interfered with any water line, hydrant, pumping station, or any other property of the Corporation. He maintains that the impugned order is based upon assumptions, conjectures, and presumptions without any material connecting the applicants with the alleged offence, that no specific role has been assigned to them, and that the FIR is false, fabricated, and lodged in collusion with the complainant and certain police officials owing to the applicants' refusal to succumb to their illegal demands. He further contends that all prosecution witnesses are officials of the complainant department and are, therefore, interested witnesses, while no independent witness from the locality has been associated despite the alleged occurrence having taken place in a populated area. He also submits that no incriminating article has been recovered from the applicants and that any alleged recovery is devoid of evidentiary value. Lastly, learned counsel argues that the offences under Sections 341, 427, and 430 of the Pakistan Penal Code are bailable in nature, a fact overlooked by the learned Tribunal, and that, in any event, the case of the applicants squarely falls within the ambit of further inquiry as contemplated under Section 497(2), Cr.P.C., entitling them to the concession of bail, as it is a settled principle of law that the law relating to bail is not to be stretched in favour of the prosecution and that the benefit of doubt is to be extended to the accused even at the bail stage.

4. Conversely, learned counsel for KW&SC vehemently opposed the grant of bail and submitted that the applicants were apprehended at the spot during a raid while actively involved in illegal boring / drilling. He argued that the applicants were specifically nominated and their presence at the crime scene clearly establishes their complicity, hence the applicants do not deserve leniency. He prayed for dismissal of the bail application.

5. Learned Assistant Prosecutor General also opposed the bail application and adopted the arguments advanced by learned counsel for KW&SC. He submitted that sufficient material is available on record connecting the applicants with the commission of offence, particularly their arrest at the spot. He further argued that the nature of allegations is and affects society at large; therefore, the applicants are not entitled to concession of bail. He prayed for dismissal of the bail application.

6. I have heard the learned counsel for the parties and have gone through the available record with their able assistance. At the bail stage, the Court is required to make only a tentative assessment of the available material without entering into the deeper appreciation of evidence, lest it may prejudice either side during trial. Admittedly, the applicants are alleged to have been apprehended at the spot while carrying out boring/drilling work; however, the material presently available on record does not prima facie demonstrate that they had caused any actual damage to the water supply system, installations, pipelines, hydrants, pumping stations, or any other property of the Karachi Water & Sewerage Corporation so as to unmistakably attract the provisions of Sections 430, 427 and 341, P.P.C. The prosecution has also not placed on record any technical or inspection report indicating that the alleged boring activity had resulted in any damage, obstruction or interference with the Corporation's water infrastructure. Whether the alleged boring was unauthorized, whether it had any nexus with the alleged offences, and whether the applicants possessed the requisite criminal intent are all questions which require thorough examination during the course of trial.

7. Furthermore, the offences alleged do not fall within the prohibitory clause of Section 497 Cr.P.C. and carry lesser punishment. It is a settled principle of law that in such cases, bail is a rule and refusal is an exception, particularly when no exceptional circumstances are shown which may justify continued detention. The question as to whether the applicants had any active role in commission of the alleged offence or were merely present at the spot would be determined after recording of evidence at trial. At this stage, deeper appreciation of evidence is not warranted. In the case of **Muhammad Amjad Naeem v. The State through Prosecutor General Punjab and another (2025 SCMR 1130)**, the Honourable Supreme Court of Pakistan held as follows: *“There is also another important legal aspect of this case, namely, that bail was refused vide the impugned judgment, notwithstanding the fact that the offence of criminal breach of trust punishable under section 406 P.P.C does not fall within the prohibitory clause of section 497(1) Cr.P.C. This refusal becomes questionable when examined in light of the settled principle of law, namely, that in cases involving commission of non-bailable offences not falling within the prohibitory clause of 497(1) Cr.P.C,*

bail is granted as a rule and refusal is an exception. Disregard of this cardinal principle of bail jurisprudence warrants serious judicial introspection” .

8. For the foregoing reasons and without touching the merits of the case, the instant bail application is allowed. The applicants namely Rooh Allah son of Syed Wali and Taj Wali Khan son of Niaz Wali Khan are admitted to bail subject to their furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) each and P.R. bond in the like amount to the satisfaction of the learned trial Court. It is, however, observed that the findings recorded herein are tentative in nature, made solely for the purpose of deciding the present bail application, and shall not prejudice the case of either party during the course of trial.

These are the detailed reasons for the Short Order dated 24.06.2026.

JUDGE