

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Cr. Bail Application No. S-365 of 2026

Applicant: Hussain Ali s/o Ali Hassan
Through Mr. Muhammad Saleem Kunbar
advocate.

Respondent: The state through Mr. Neel Parkash,
learned D.P.G.

Date of Hearing: 27.07.2026

Date of Order: 27.07.2026

O R D E R

Khalid Hussain Shahani, J: Applicant Hussain Ali seeks pre-arrest bail in a case bearing Crime No.65/2026, for offence under Section 430 P.P.C., read with Sections 61/62 of the Irrigation Act, at P.S. Perumal, arising from the dismissal of his bail plea by the learned Additional Sessions Judge-I/MCTC, Sanghar, vide order dated 30.06.2026.

2. The prosecutorial narrative, as unfolded through the contents of the F.I.R., discloses that the complainant, serving as Darogha at Mithrao Canal Mori No.1, undertook an inspection of the watercourse in the company of his subordinate staff on 21.06.2026. At approximately 1500 hours, upon arrival at Watercourse No.5/L, the complainant party allegedly observed the applicant, in the company of two unidentified persons, in the act of installing a pipe within the watercourse. Upon sighting the complainant party, the applicant is said to have fled the scene, taking the pipe with him. The complainant thereafter reported the occurrence to the Sub-Divisional Officer, Irrigation Sub-Division, Zaheer Ahmed Memon, who, vide Letter No.SDC/SGR/99 dated 21.06.2026, directed registration of the F.I.R, pursuant to which the instant criminal case was set into motion.

3. Learned counsel for the applicant, addressing the Court with considerable emphasis, contended that the applicant is entirely innocent and has been implicated through mala fide design and ulterior motive at the instance of the complainant. He submitted that the entirety of the prosecution's evidence rests upon witnesses who are official subordinates of the complainant, and that the mandatory requirement of associating independent mashirs, as enshrined under Section 103, Cr.P.C, was conspicuously disregarded. He further submitted that although Section 430, P.P.C. is non-bailable in character, the maximum punishment prescribed thereunder extends only to five years' imprisonment, and the offence therefore does not fall within the prohibitory clause contemplated under Section 497(1), Cr.P.C, which stands attracted only to offences punishable with death, imprisonment for life, or imprisonment extending to ten years. He submitted that the offences under Sections 61 and 62 of the Irrigation Act, being themselves bailable, lend further support to the applicant's entitlement to the concession sought. On this foundation, he prayed for confirmation of bail.

4. Learned D.P.G for the State, in opposition, contended that the applicant stands specifically nominated in the F.I.R. and that sufficient incriminating material exists on the record to connect him with the commission of the alleged offence, thereby resisting the grant of relief.

5. This Court has accorded anxious and considered attention to the rival contentions advanced at the Bar and has undertaken a meticulous examination of the record. The role ascribed to the applicant is that he, in concert with two unknown persons, installed a pipe in the watercourse and, upon being sighted by the

complainant party, absconded from the spot with the said pipe. It is significant, and indeed telling, that the entire edifice of the prosecution case rests upon witnesses who are subordinate in official capacity to the complainant, with no independent or private mashir having been associated at any stage, a lapse squarely offending the mandate of Section 103, Cr.P.C. It further merits emphasis that, although the offence under Section 430, P.P.C. is non-bailable, it is punishable with imprisonment extending only to five years and therefore does not attract the prohibitory rigor contemplated under Section 497(1), Cr.P.C., which is confined to offences punishable with death, imprisonment for life, or imprisonment extending to ten years. This position finds direct support in the law laid down by the Hon'ble Supreme Court in case of *MUHAMMAD SIDDIQUE Versus IMTIAZ BEGUM AND 2 OTHERS* reported in *2002 SCMR 442*, holding that non-bailable offences falling short of the prohibitory threshold do not entitle an accused to bail as of right, but nonetheless remove the statutory bar that would otherwise mandate refusal. It is equally fortified by the ratio in case of *NOMAN KHALIQ versus State* reported in *2023 SCMR 2122* and analogous Sindh High Court authority, wherein offences of comparable non-bailable but sub-ten-year character were held to attract the settled rule that bail, rather than jail, is the norm in such cases. The offences under Sections 61 and 62 of the Irrigation Act, being bailable in nature, do not alter this position. In matters falling outside the prohibitory clause, the grant of bail remains the rule and its refusal the exception, to be invoked only in circumstances of compelling gravity, a threshold not met on the facts of the instant case. In view of the foregoing, the instant bail application is allowed, and the interim pre-arrest bail earlier granted to the applicant vide

order dated 06.07.2026 is hereby confirmed, subject to the same terms and conditions as previously imposed.

6. It is clarified, for the avoidance of doubt, that the observations recorded hereinabove are of a tentative character, confined strictly to the purposes of the instant bail application, and shall not be construed as an expression of opinion touching the merits of the case, nor shall the same operate to the prejudice of either party at the trial.

7. The instant Criminal Bail Application stands disposed of in the terms noted above.

JUDGE

"Chander Kumar"