

IN THE HIGH COURT OF SINDH AT KARACHI
Bail Application No. 1008 of 2026

Date: **Order with Signature of Judge(s)**

Applicant : Muhammad Kashif Khan
Through Mr. Sajid Rajput, advocate

Respondent : State through complainant
Represented by Mr. Nadeem Ali
Abbasi, Mr. Muhammad Mohsin
Mangi, APG

Date of Hearing : 18-05-2026

Date of order : 18-05-2026

ORDER

KHALID HUSSAIN SHAHANI, J.:-- The applicant Muhammad Kashif Khan stands charged in FIR No. 07/2026 registered at Police Station Shahrah-e-Faisal, Karachi, under Section 381-A/34 PPC for the alleged theft of a motor vehicle viz. Honda Civic bearing registration No. AMQ-388. Three successive bail applications moved before the learned trial Court and thereafter before the learned XIVth Additional Sessions Judge, Karachi East, were dismissed, the last impugned order having been passed on 18.02.2026. The applicant now approaches this Court seeking post-arrest bail under Section 497 Cr.P.C.

2. According to the FIR, the complainant Muhammad Ali Haroon Rasheed parked his Honda Civic at the parking of Bungalow No. SU-85, Askari IV, Rashid Minhas Road, Karachi on 28.12.2025 at approximately 1530 hours and found it missing on 30.12.2025 at about 1230 hours. The FIR was lodged on 02.01.2026 against unknown persons. The applicant/accused was subsequently arrested on 07.01.2026 upon spy information, allegedly in possession of the subject vehicle at Al-Asif Square Bus Stop.

3. Heard and perused the record. Section 381-A PPC prescribes a maximum punishment of seven years, which does not bring the offence within the prohibitory clause of the first proviso to Section 497(1) Cr.P.C., which is attracted only where the offence is punishable with death, imprisonment for life, or imprisonment for ten years. It is well-settled that where an offence does not fall within the prohibitory clause, the accused is ordinarily entitled to bail and the Court exercises its discretion in favour of personal liberty unless there are compelling countervailing considerations. Reliance is placed in case of 2025 SCMR 721; 2023 SCMR 679; PLD 2017 SC 733. The learned Sessions Court erred in mechanically applying the principle that non-inclusion in the prohibitory clause does not guarantee bail, without weighing that proposition against the totality of facts and circumstances which, in the present case, overwhelmingly favour the applicant.

4. The memo of arrest reveals that the investigation officer proceeded to the pointed-out location upon spy information and, upon recovery of the subject vehicle, did not associate a single private mashir despite the location being Al-Asif Square, a busy and accessible public thoroughfare where private witnesses were readily and demonstrably available. The arrest and recovery are thus supported only by official witnesses, which constitutes a patent infirmity in the prosecution record. It is settled law that recovery effected without associating private mashirs, where such mashirs were available at the spot, weakens the evidentiary value of the recovery and creates a reasonable doubt entitling the accused to the benefit thereof at bail stage. Reliance is placed on the case of 2023 SCMR 737; 2022 MLD 452. The learned Court below dismissed this ground by observing that recovery from the accused's possession was sufficient, but that approach failed to appreciate that the unexplained non-association of private mashirs at an accessible public location itself invites an adverse inference regarding the manner in which the recovery was effected.

5. It is trite law, enunciated by the apex Court in a long series of authoritative pronouncements, that bail is not a punishment and that the question of guilt or innocence is not to be conclusively adjudicated at the bail stage. Only a tentative assessment of available material is permissible and warranted. The present case involves an FIR lodged against unknown persons with no named accused and no eyewitness to the alleged theft, a delay of four days between the discovery of the vehicle's absence and the registration of the FIR, arrest based on spy information without independent corroboration, and the accused's admitted status as the complainant's own driver who had lawful access to the vehicle. All of these factors, cumulatively assessed at the tentative level appropriate to this stage of proceedings, demonstrate that the determination of guilt or innocence must await a full-dressed trial and cannot be resolved adversely to the accused at this juncture. Reliance is placed on the cases of PLD 2017 SC 733; 2025 SCMR 721; 2023 SCMR 679.

6. The investigation officer has submitted the charge sheet under Section 173 Cr.P.C. and the case is now before the trial Court. The applicant is no longer required for the purposes of investigation, and his continued incarceration is neither necessary to prevent tampering with evidence nor to secure his presence at trial, which can be adequately ensured through surety bonds. The applicant/accused is a permanent resident of Karachi with no previous criminal antecedents, and there is no credible apprehension of abscondence or interference with prosecution witnesses. Prolonged pre-trial detention without cogent justification offends Article 9 of the Constitution of Pakistan, 1973, which guarantees the right to life and liberty, and pre-trial detention must not be employed as a surrogate for punishment.

7. Having regard to the totality of the above circumstances, particularly the unequivocal concession by the

complainant's own counsel that the applicant was the complainant's driver and thus had lawful access to the vehicle, the non-association of private mashirs despite their availability at the place of recovery, the fact that the offence does not fall within the prohibitory clause of Section 497(1) Cr.P.C., the blind nature of the FIR with no named accused, the unexplained delay in lodging the FIR, and the cardinal principle that guilt or innocence is to be adjudicated only at full-dressed trial, this Court is of the considered opinion that the applicant/accused has made out a case of further inquiry within the contemplation of Section 497(2) Cr.P.C. and is entitled to the concession of bail.

8. The applicant/accused Muhammad Kashif Khan is admitted to bail subject to his furnishing surety in the sum of Rs. 50,000/- (Rupees Fifty Thousands) with one surety of the like amount to the satisfaction of the learned trial Court. The applicant/accused shall appear before the learned trial Court on each date of hearing without fail, and in the event of breach of any condition the surety shall stand forfeited and the bail shall be liable to cancellation. It is clarified that the observations made hereinabove are entirely tentative in nature, confined solely to the purposes of this bail order, and shall neither influence nor prejudice the learned trial Court in its adjudication of the case on merits.

J U D G E