HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.D-1956 of 2026

[Arbab Muhammad Din Memon and another vs. Province of Sindh and others]

Before:

JUSTICE ADNAN-UL-KARIM MEMON
JUSTICE MUHAMMAD JAFFER RAZA

Petitioners:	Through M/s. Rafique Ahmed Kalwar & Abdul Qadeer, Advocate
Respondents:	Through Mr. Rafique Ahmed Dahri, Additional A.G Sindh, and Mr. Shawak Rathore, Deputy Prosecutor General
Complainant:	Tilok Chand is called absent.
Date of hearing & Decision	27.10.2026

O R D E R

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ADNAN-UL-KARIM MEMON J.- Through instant constitutional petition, the petitioner seeks following relief(s):_

(i) Grant ad-interim post-arrest bail to the Petitioner in FIR No. 145 of 2025, registered at Police Station Berote Hub, District Hub, Balochistan, under Section 489-F PPC, for period as this Hon'ble Court may deem fit, so to enable the Petitioner to appear before and seek regular pre-arrest/post-arrest bail from the competent Court at Hub, Balochistan, subject to his furnishing solvent surety and P.R. Bond in such amount as this Hon'ble Court may direct, to the satisfaction of the Additional Registrar of this Hon'ble Court;

(ii) Consequent thereupon, direct Respondents No. 3 and 4 (the Inspector General, SPCS, and the Superintendent, Central Prison & Correctional Facility, Hyderabad) to release the Petitioner from custody forthwith upon furnishing of such surety, there being no other lawful impediment to his release;

(iii) Restrain the Respondents, their subordinates, agents and any police authority in any Province of Pakistan from arresting or re-arresting the Petitioner during the interim period, and from arresting him on the basis of any other or further FIR/complaint arising out of the same set of transactions or the cheques detailed herein above, without prior leave of this Hon'ble Court;

(iv) Grant protection to the Petitioner against arrest on the basis of any alleged FIR registered against him in any Province of Pakistan, by any person whomsoever, in respect of the said chain of transactions, pending the Petitioner's approach to the competent Court(s) concerned;

(v) Grant any other, further or better relief which this Hon'ble Court may deem just, fit and proper in the peculiar facts and circumstances of the case.

2. The petitioner, a builder and developer operating under the name and style of Shams Builders and Developers, is presently confined at Central Prison and Correctional Facility, Hyderabad. He claims to have acquired Plot No.1, measuring 3,920 square yards, situated at Data Nagar Housing Scheme, Hyderabad, from Mahesh Kumar Hasija through a Composite Agreement of Sale/Joint Venture dated 21.02.2019, for consideration of Rs.1,176,000,000/-, and subsequently developed the project known as "Shams Icon." He alleges that Mahesh Kumar Hasija, in connivance with his former wife, Fareeda Memon alias Dua Thebo, unlawfully obtained his cheque books and project records during his illegal detention and misused the cheques, resulting in the registration of successive FIRs under Section 489-F PPC and other provisions in different districts of Sindh and Balochistan. The petitioner submits that he has secured acquittal, discharge, disposal under "B"-Class or bail in all cases registered against him in Sindh. However, his continued incarceration is solely attributable to FIR No.145 of 2025 registered at Police Station Beroot, Hub, Balochistan, wherein warrants of arrest were executed by the jail authorities and his arrest was formally recorded. He alleges that the Judicial Magistrate-I, Hub, declined to entertain his post-arrest bail application vide order dated 05.08.2026 on the ground that he had not been physically produced before the Court, while the Superintendent, Central Prison, Hyderabad, refused to release him due to his arrest in the said FIR. Consequently, despite having taken steps to submit himself to the jurisdiction of the competent Court, the petitioner remains unable to secure consideration of his bail application on merits or obtain release. The petitioner further relies upon the order dated 10.11.2021 passed by this Court in Criminal Miscellaneous Application No. D-11 of 2021, wherein similar circumstances were addressed by granting ad-interim post-arrest bail to enable the accused to approach the competent Court in another province. He also apprehends re-arrest in further cases purportedly instituted at the behest of the complainant and his accomplices.

3. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in a series of *mala fide* and interlinked FIRs arising out of the alleged unauthorized possession and misuse of his cheque books, and that he has already secured bail or acquittal in all cases registered against him in Sindh. He submits that the offence under Section 489-F PPC does not fall within the prohibitory clause of Section 497 Cr.P.C. and that bail is a rule and refusal an exception; that the petitioner is trapped in a procedural deadlock, as the jail authorities refused to release him due to his arrest in FIR No.145 of 2025, registered at Police Station Beroot, Hub, Balochistan, while the Magistrate, Hub, declined to entertain his bail application owing to his non-production before the Court. Relying upon the precedent of this Court in Criminal Miscellaneous Application No. D-11 of 2021, learned counsel seeks ad-interim transitory post-arrest bail to enable the petitioner to approach the competent Court at Hub, along with directions for his

release and protection against re-arrest in further cases arising from the same transactions. He maintains that the petitioner's continued incarceration violates his fundamental rights guaranteed under Articles 4, 9, 10-A and 25 of the Constitution.

4. Learned AAG, assisted by learned APG, submitted that accused, Arbab Muhamunad Deen, was transferred to Central Prison, Hyderabad, from Special Prison and Correctional Facility, Nara, Hyderabad, on 28.03.2025, on medical grounds. Out of nine cases registered against him, he has been granted bail in six cases and acquitted in two, while only FIR No. 145/2025 under Section 489-F PPC, registered at Police Station Berut Hub, Balochistan, remains pending before the Judicial Magistrate-1, Hub. He stated that his arrest warrant was executed in compliance with the directions of Judicial Magistrate-1, Hub; however, no subsequent order regarding bail or otherwise, nor any production order, has been received from the said Court. The relevant case details were also provided to the petitioner's counsel vide letter dated 18.09. 2026. He adds that the petitioner/ accused is required to be produced before the Judicial Magistrate-1, Hub, where his case is pending.

5. Learned counsel for the petitioner submitted that this court has jurisdiction under Section 498 Cr.P.C. to grant anticipatory interim bail to a person residing within its territorial jurisdiction, even where warrants of arrest have been issued by a Court situated in another province. He contends that the High Court’s powers to grant bail remain intact unless expressly curtailed by law and that the mere fact that the offence falls outside its territorial jurisdiction does not, by itself, bar the exercise of such powers. Learned counsel further submits that this Court may grant interim relief, subject to appropriate surety and an undertaking to appear before the competent Court.

6. Additional Prosecutor General (APG) submits that, in Muhammad Amin v. The State (1973 P.Cr.L.J. 661), this Court held that it has jurisdiction under Section 498 Cr.P.C. to grant anticipatory interim bail to a person residing within its territorial jurisdiction; he added that the offence falling outside its territorial jurisdiction does, by itself, bar the exercise of such powers. Learned APG further submits that the question of jurisdiction may require consideration by a larger Bench. He prayed to dismiss the petition.

7. We have heard the counsel for the parties and perused the record with their assistance and the case law cited at the bar.

8. Learned Magistrate, Hub, vide order dated 5.8.2026, observed that the accused was still confined at Central Prison, Hyderabad, and had not been physically produced before the Court in connection with the instant FIR No.145 of 2025 of PS Beroot Hub. Consequently, his post-arrest bail application was

premature and not maintainable at that stage. The application was accordingly dismissed, with liberty to the accused to file a fresh bail application upon securing his physical custody and production before the competent Court.

9. The controversy requiring determination is not whether this Court can decide the petitioner's regular post-arrest bail application in a case pending before the competent Court at Hub, Balochistan, but whether, in the peculiar circumstances of the case, this Court may grant limited transitory bail to enable the petitioner, who is presently confined at Central Prison and Correctional Facility, Hyderabad, to approach the competent Court and seek an adjudication of his bail application on its own merits.

10. The concept of protective bail finds its roots in Section 498-A Cr.P.C. but has no definitive provision under which the remedy could be sought. It is a concept developed primarily by the Courts to protect the liberty of the person and to facilitate him to approach the competent Court or authority to surrender and seek remedy. It is akin to the right of any person to have access to justice; needless to observe that this remedy is purely based on the discretion of the Court and, as noted above, no crystallized principles or rules exist regarding its scope and application. Besides Under Sec 86 r/w 497 Cr.P.C, both magistrates and Sessions are empowered to extend transitory bail, but it will depend on nature offence, the grant of transitory bail does not amount to a final determination of the petitioner's entitlement to regular bail, nor does it transfer the criminal proceedings from the territorial jurisdiction of the Court where the FIR is pending.

11. It is an admitted position that FIR No.145 of 2025, registered at Police Station Beroot, Hub, Balochistan, under Section 489-F PPC, remains pending against the petitioner; that warrants of arrest issued by the Judicial Magistrate-I, Hub, were executed by the jail authorities without his production and kept mum in the intervening period, knowing such factum and orders; and that his arrest was formally recorded in connection with the said FIR in jail record. Learned AAG has further confirmed that, out of nine cases stated to have been registered against the petitioner, bail has been granted in six cases and he has been acquitted in two, whereas the aforesaid FIR remains pending. It is also not disputed that the petitioner continues to remain confined in the present case because no subsequent order granting bail or directing his release has been received from the competent Court at Hub.

12. In our opinion, although the accused/petitioner is in custody in other case where he has been granted post arrest bail in all cases and the only one FIR is registered against him at Hub, in such circumstances, the requirement of Section 498-A Cr.P.C. cannot be disregarded. Without touching the merits, the petitioner,

who is already confined in other cases in Sindh and has been granted post-arrest bail therein, is willing to surrender before the competent Court at Hub to face trial. His non-production before the concerned Magistrate, owing to the absence of a production order, cannot be attributed to him or treated him as absconsion. In the circumstances, in the interest of justice and fair trial guaranteed under Article 10-A of the Constitution, he deserves a fair opportunity to approach the competent Court at Hub in accordance with law for which the jail authority failed and deliberately neglected to produce him in the concerned Court in time.

13. The objection regarding territorial jurisdiction also requires careful consideration. The fact that the FIR has been registered in Balouchistan and that the competent criminal Court is situated at Hub does not, by itself, conclusively answer whether this Court may grant limited interim protection to a person confined within its territorial jurisdiction. In Muhammad Amin v. The State (1973 P.Cr.L.J. 661), the principle has been recognized that a High Court may exercise jurisdiction under Section 498 Cr.P.C. to grant interim pre-arrest bail to a person residing within its territorial jurisdiction, notwithstanding that the warrant of arrest was issued by a Court in another province. More significantly, in Mst. Nargis v. The State (1997 PCr.L.J. 420), the Lahore High Court considered a request for interim transitory bail after arrest where the accused was confined in a jail within that province, while the criminal case and warrants originated from a Court at Karachi. The Court granted limited transitory bail to enable the accused to approach the competent Court, while recognizing the jurisdictional question involved.

14. We are further mindful of the order dated 05.08.2026 passed by the Judicial Magistrate-I, Hub, whereby the petitioner's post-arrest bail application was declined as premature and not maintainable because he had not been physically produced before that Court. The Magistrate granted liberty to file a fresh bail application upon securing physical custody and production before the competent Court. Thus, the application was not rejected after consideration of the merits of the accusation under Section 489-F PPC; rather, it was declined on a procedural ground. The consequence is that the petitioner remains in custody pursuant to the arrest recorded in the very FIR for which he seeks bail, while the Court seized of that FIR has not considered his entitlement to bail on merits. At the same time, the jail authorities have stated that they have received no subsequent order authorizing his release. This situation calls for a legally permissible and effective remedy; it does not, however, justify disregarding the jurisdiction of the competent Court or the lawful process under which the petitioner is detained.

15. The petitioner's contention that Section 489-F PPC does not fall within the prohibitory clause of Section 497 Cr.P.C. may be a relevant consideration when his regular bail application is examined by the competent Court. The settled principle that bail is ordinarily favoured where the statutory prohibitory conditions are not

attracted must be applied in accordance with the facts, the nature of the accusation, the available material and the applicable law.

16. In view of the foregoing, this Court is satisfied that limited transitory bail is maintainable in the circumstances; the petitioner is allowed to approach the competent Court at Hub within two weeks and to secure consideration of the petitioner's bail application on merits in the subject F.I.R., subject to furnishing by the accused solvent surety in the sum of Rs. one million and PR Bond in the like amount to the satisfaction of the Additional Registrar of this Court. This order shall remain operative only for 14 days from today and shall cease to exist on expiry of the period or when the applicant/accused surrenders before the concerned court, whichever is earlier. If the accused fails to surrender before the concerned trial Court in the aforesaid given period the surety shall stands forfeited.

17. The petition is disposed of in the above terms.

JUDGE

JUDGE

Karar_Hussain/PS*