

**IN THE HIGH COURT OF SINDH AT KARACHI**  
**Criminal Bail Application No.2794 of 2024**

**Present:**

**Justice Zafar Ahmed Rajput**  
**Justice Tasneem Sultana**

**Applicant** : Mustafa Khan s/o Gul Hawas Khan  
through M/s. Salah Uddin Khan Gandapur  
& Safir Uddin Khan Gandapur, Advocates

**Respondent** : The State, through Ms. Rahat Ehsan,  
Additional Prosecutor General, Sindh.

**Date of hearing** : 24-02-2025  
**Date of order** : 24-02-2025

**ORDER**

**TASNEEM SULTANA, J.** Through this bail application, applicant/  
accused, namely, Mustafa Khan s/o Gul Hawas Khan seeks post-arrest  
bail in FIR No.1135 of 2024, registered at P.S Shah Latif Town, Karachi  
under sections 124-A, 153-A, 500, 505, 148 and 149, P.P.C., read with  
section 7 of the Anti-Terrorism Act, 1997 ("**Act of 1997**").

2. Precisely facts of the prosecution case are that, on 06.09.2024,  
complainant SIP Muhammad Rizwan along with his subordinate staff,  
while on patrolling, responded to an unauthorized gathering of PTM at  
Waziristan Road, Zafar Town, Karachi, where a person was delivering  
speech in Pushto and Urdu languages inciting the people to revolt against  
the State by saying that the *uniform is behind the terrorism* and that *there are*  
*two laws in the country, one for Pushtoon and other for remaining Pakistanis*. He  
was using indecent language against Generals of Army. The complainant  
with the assistance of his staff apprehended the applicant, who was raising  
slogan and also inciting the people. The alleged acts of the accused persons  
caused fear, panic and terror, however, a large number of armed persons

fled from the crime scene. The complainant lodged the aforesaid FIR nominating 18 persons by names and 80-90 unknown accused persons.

3. Learned counsel for applicant has contended that the applicant has been booked under sections 124-A & 153-A, P.P.C., however, prosecution failed to comply with the provisions of section 196 of the Code of Criminal Procedure, 1898 ("Cr.P.C."), which requires prior permission from Government before filing a case under these sections. He has also contended that nothing incriminating has been recovered from the alleged place of incident, and no overt act has been assigned to applicant except that of his presence in the gathering; hence, the guilt against the applicant requires further inquiry entitling him to post-arrest bail.

4. Conversely, learned Additional P.G. Sindh, has vehemently opposed the instant bail application. She has maintained that the prosecution has no ill-will or personal grudge to implicate the applicant falsely and since the applicant was raising slogans against Pak Army, he attempted to create unrest, hatred and commotion in the minds of people against the Pak Army. She further maintained that the sections mentioned in the FIR have been properly applied and a letter for requisite permission under section 196, Cr.P.C has been sent, however, the same is being awaited; therefore, the applicant is not entitled to the concession of bail.

5. We have heard the learned counsel for the parties, and examined the record with their assistance.

6. We would like to attend first the legal and procedural question raised by the learned counsel for the applicant in respect of non-compliance of Sec. 196, Cr.P.C. It may be pointed out that section 124-A is

in Chapter-VI of P.P.C., which relates to the offences against the State. It would be advantageous to reproduce Sec 196, Cr.P.C which is an exception to the general rule that anyone can set the law in motion by lodging FIR: -

*Sec 196: Prosecution for offences against the State. No Court shall take cognizance of any offence punishable under chapter VI or IX-A of the Pakistan Penal Code (except section 127), or punishable under section 108-A, or section 153-A, or section 294-A, or section 295-A or section 505 of the same Code, unless upon complaint made by order of , or under authority from, the Federal Government, or the Provincial Government concerned, or some officer empowered in this behalf by either of the two Governments.*

7. The object of legislating section 196, Cr. P.C is to grant power to the Federal or Provincial Government to decide whether a person should or should not be tried as the trial may embarrass the Government at home or abroad, so section 196, Cr. P.C creates a clog on the taking of cognizance of a case by a court, which cap can be removed only, if complaint provided under section 196, Cr. P.C is lodged on the authorization of the concerned Government.

8. In present case, admittedly no such complaint from Federal or Provincial Government or authorized officer has been made. However, section 7 of the Act of 1997 has also been cited in the FIR, as offence allegedly committed by the applicant. The basic procedural law for trial of criminal cases is the Cr. P. C.; sub-section (2) of Section 1 thereof clearly provides that nothing contained in Cr. P.C. shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for time being in force. As pointed out earlier, the provisions of the Act of 1997 are part of the FIR, Section 12 *ibid* deals with the jurisdiction of Anti-Terrorism Court

("ATC") while section 19(3) of the Act of 1997 stipulates that ATC shall directly take cognizance of a case triable by such court without the case being sent to it under section 190, Cr.P.C. It is pertinent to note that section 32 of the Act of 1997 stipulates that the Act of 1997 has over riding effect. For the sake of convenience, section 32 (1) *ibid* is reproduced, as under: -

**32. Overriding effect of Act....(1)** *The provisions of this act shall have effect notwithstanding anything contained in the Code or any other law but, save as expressly provided in this Act, the provisions of the Code shall, in so far as they are not inconsistent with the provisions of this act, applied to the proceedings before [an Anti-Terrorism Court], and for the purpose of the said provisions of the Code, [an Anti-Terrorism Code] shall be deemed to be a Court of Sessions*

**9.** We are, therefore, of the view that ATC can proceed with such cases irrespective of the bar contained in section 196, Cr. P.C., which provision would not in any way effect the taking of cognizance by the ATC in exercising power under Section 19 of the Act of 1997 for offence falling in Chapter VI of P.P.C. without having approval of Government.

**10.** Section 124-A, P.P.C. provides two types of punishments i.e. one for imprisonment for life and other for imprisonment which may extend to three years. Hence the Trial Court has to form opinion after considering the material brought on record in evidence as to whether in the circumstances of the case, it would be a case punishable with imprisonment of three years or life. Reliance is placed on *Zahid Malik v. The State (1990 PLJ 1310)* where in similar circumstances bail has been granted on the ground of further enquiry, as at bail stage it cannot be definitely held that the case against the accused falls within the prohibitory clause of Sec 497, Cr. P.C.

11. It appears from the tentative assessment of the material available on record that the present applicant is not the main accused who made alleged speech. Even the name of main accused is not mentioned in FIR. The only allegation against the applicant is that of raising slogans, however, the exact words of the alleged slogans are not mentioned in the FIR. Nothing is available on record if the prosecution is relying on any audio or video recording of the incident. It will be relevant to mention here that Article 164 of Qanun-e-Shahadat Order, 1984 and section 27-B of the Act of 1997 provide the admissibility of such evidence secured through modern devices and electronic and forensic evidence.

12. It may be observed that in the instant case, more than five months have passed, yet the I.O. has not submitted final report under section 173, Cr.P.C which by law he is required to submit after completing investigation in respect of cases triable by the ATC within thirty days as per section 19(2) of the Act of 1997. In such circumstances, accused cannot be kept in jail for indefinite period.

13. For the foregoing reasons, this Criminal Bail application is allowed. The applicant is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs. 50,000/- (*Rupees Fifty Thousand Only*) and P.R Bond in like amount to the satisfaction of trial Court.

14. Above are the detailed reasons of our short order dated 24-02-2025.

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