

**IN THE HIGH COURT OF SINDH, BENCH AT
SUKKUR**

Cr Bail Application No.S-29 of 2025

Applicant(s): **Gulshan Ali Mahar** is present along with Mr. Abdul Samad Noonari, Advocate.

Respondent: The State, through Syed Sardar Ali Shah, Additional Prosecutor General.

Date of hearing: **06.02.2025**

Date of decision: **06.02.2025**

ORDER

RIAZAT ALI SAHAR, J- Through the instant criminal bail application, the applicant seeks the concession of pre-arrest bail in connection with FIR No.06 of 2018, registered at Police Station ACE, Sukkur, for offences punishable under Sections 409 & 34 PPC read with section 5(2) Act-II of 1947. The applicant, having been denied the relief of pre-arrest bail by the learned trial Court vide order dated 01.04.2021, now invokes the jurisdiction of this Court by way of the present application under Section 498-A Cr.P.C, seeking the same relief.

2. The allegations against the present applicant, as set forth in the FIR, are that while he was posted as SIO, P.S, Rohri, he received government SMG from armoury of police station through co-accused WPC Imtiaz Jiskani and he deposited the weapon after keeping with him at his residence for ten months. The numbers on body and butt were found punched and necessary parts of said weapon were also changed by him.

3. It is, *inter alia*, contended by learned counsel for the applicant that applicant is innocent and has falsely been implicated in this case with mala fide intentions and ulterior motives; that the

offence with which the applicant stands charged does not come within the prohibitory clause of section 497 CrPC; that there is inordinate delay of 12 years in lodgement of FIR, for which no proper explanation has been offered by the prosecution; that after grant of interim pre-arrest bail, the applicant has not misused the concession of bail and has been regularly attending the trial Court; that co-accused Imtiaz Ali has been admitted to pre-arrest bail by the trial Court vide order dated 28.06.2021, hence present applicant is also entitled for same relief under the rule of consistency.

4. Learned Additional Prosecutor General did not oppose the confirmation of interim pre-arrest bail earlier granted to the applicant by this Court.

5. Having heard the learned counsel for the respective parties and perused the record available before me, I proceed to determine the matter accordingly.

6. It is a well-settled principle of law that where reasonable grounds exist to believe that further inquiry is required to determine the guilt or innocence of the accused, the benefit of bail should be extended. The case at hand necessitates such an inquiry, as the allegations against the applicant are yet to be substantiated through cogent and convincing evidence. The mere recovery of a government-issued weapon with certain alterations, without any clear and direct evidence of criminal intent or wrongful gain, raises substantial doubts regarding the culpability of the applicant, which can only be determined at trial. Furthermore, the fact that the co-accused, Imtiaz Ali, has already been admitted to pre-arrest bail reinforces the rule of consistency in granting similar relief to the present applicant.

7. Moreover, the allegation that the applicant tampered with the government-issued weapon by altering its serial numbers and changing necessary parts remains unsubstantiated in the absence of a forensic or ballistic report. The mere assertion of such tampering cannot suffice as conclusive proof without expert analysis, which is

imperative to determine whether any modifications were indeed made and if they fall within the ambit of criminal liability. This further necessitates a deeper inquiry into the matter, reinforcing the applicant's entitlement to pre-arrest bail until such technical evidence is furnished and properly examined at trial.

8. Another pivotal aspect warranting the grant of bail is the inordinate and unexplained delay of 12 years in the registration of the FIR. Delay in lodging an FIR not only diminishes the evidentiary value of case of prosecution, but also casts serious doubts over the veracity of allegations. A delay of such magnitude, without any plausible justification, suggests mala fide intent and ulterior motives on the part of the prosecution. The principle of fair trial, as enshrined under Article 10-A of the Constitution, mandates that justice must not only be done but should also be seen to be done in an expeditious manner. Prolonged delay in trial proceedings frustrates the very essence of justice and places an unwarranted burden on the accused, who is entitled to the presumption of innocence until proven guilty.

9. It is a fundamental principle of criminal jurisprudence that an accused is the "*favourite child of the law*" and is entitled to the benefit of every reasonable doubt. In cases of delayed prosecution, the rights of an accused must be safeguarded, as prolonged litigation not only affects the accused's liberty but also their personal and professional life. The courts have consistently held that keeping an accused embroiled in criminal proceedings indefinitely, without substantial progress, is tantamount to injustice and negates the core principles of due process.

10. I am also guided by the sagacious pronouncement of the Honourable Supreme Court in the case of *Chairman NAB v. Nisar Ahmed Pathan (PLD 2022 SC 475)*, wherein the Court astutely observed that when two equally plausible opinions can be formed based on the same material, the courts must lean in favour of the accused, thereby upholding his fundamental rights to liberty, dignity,

a fair trial, and protection against arbitrary detention. The Court further enunciated that it is preferable to err on the side of granting bail rather than denying it, as any mistake in granting bail can ultimately be rectified by the conviction and sentencing of a guilty person. However, no adequate or meaningful redress can be provided to an innocent individual who, upon acquittal, has already suffered the irreparable hardship of unjustified incarceration during the course of trial.

11. Furthermore, the slow pace of trial in such matters often results in undue hardship for the accused. Keeping the applicant behind bars under such circumstances would serve no beneficial purpose, particularly when there is no apprehension of tampering with evidence or absconding. The record indicates that the applicant has diligently attended trial proceedings, demonstrating his bona fide intent to face the allegations against him. Denying bail in such a scenario would not only amount to pre-trial punishment but would also undermine the fundamental rights of applicant.

12. In light of the above discussion, it is apparent that the case against the applicant requires further inquiry, and the inordinate delay of 12 years in the registration of the FIR coupled with the sluggish pace of trial militates against his continued incarceration. Accordingly, the interim pre-arrest bail granted to the applicant vide order dated 14.01.2025 is confirmed on the same terms and conditions.

13. The observations made herein are tentative and shall not prejudice the case of either party at trial.

J U D G E