

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI
Criminal Bail Application No.336 of 2025

Date	Order with Signature of Judge
Applicant	: <u>Oaun Yazdani Mughal, through Syed Israr Ali Shah, Advocate.</u>
Respondent	: <u>The State through Mr. Muhammad Mohsin Mangi A.P.G, Sindh along with DSP Shoukatullah Marwat, PI Muhammad Amin, I.O, of the case & PI Hussain Chandio, on behalf of legal Incharge SSP Investigation, South Zone, Karachi.</u>
Complainant	: <u>Muhammad Imran, through Mr. Kamran Ali, Advocate.</u>
Date of hearing	: <u>23.06.2025.</u>
Date of order	: <u>26.06.2025.</u>

ORDER

Tasneem Sultana, J:- Through this Bail Application, applicant, namely, Oaun Yazdani Mughal, seeks pre-arrest bail arising out of FIR No.38 of 2025, registered at police station Ferrer, South, Karachi, under Section 406, 34 PPC. Prior to filing instant bail application, applicant also approached to the trial Court for same relief, which was declined vide order dated 31.01.2025.

2]. Precisely, facts relevant for disposal of instant criminal bail application are that on 22.01.2025, complainant Muhammad Imran lodged FIR, stating therein that on 05.10.2024 due to his ill health and financial constraints, his wife gave 2.5 tola gold including a locket, 2 bangles, and a ring for sale, his son Muhammad Areeb (16 years old) queried from market, its price assessed more than Rs.5,00,00/- but goldsmith refused to take without receipt, then contacted one Ayaan his friend, who introduced the son of complainant with applicant (Oaun) through his another friend co-accused Bilal and on his assurance the son of complainant gave gold ornaments to applicant (Oaun) but instead of assessing the value of the gold ornaments, he sold the said gold ornaments in the sum of Rs.1,00,000/- and gave Rs. 89,000/- after deducting commission when complainant side demanding return of same gold ornaments, the applicant had first kept them on false hopes and later on extended threats for dire consequences.

3]. Learned Counsel for the applicant contended that the applicant has falsely been implicated in this case by the complainant with malafide intention and ulterior motives; that the FIR was lodged with the delay of three months and 17 days without explanatory clause which creates

serious doubts in the prosecution case; that applicant has never been met with Muhammad Areeb and Muhammad Ayaan, while he only know co-accused Bilal, who usually came at the Cabin of applicant; that actual culprits are the son of complainant, Bilal and Ayaan who sold the gold at somewhere else; that applicant is regularly appearing before Trial Court; that interim pre-arrest bail order dated 06.02.2025, may be confirmed.

4]. Conversely, learned Assistant Prosecutor General Sindh, duly assisted by learned Counsel for the complainant, has opposed for confirmation of interim pre-arrest bail to the applicant on the ground that sufficient material available on record and his name is appearing in FIR with specific role; hence, prayed for the dismissal of bail application.

5]. Heard the arguments of learned Counsel for the parties and perused the material available on record.

6]. It reflects from the record that occurrence allegedly took place on 05.10.2024, whereas FIR was recorded on 22.01.2025, after delay of more than two months without explaining any sufficient reason. Such delay in lodging of FIR falls within the ambit of deliberation and after thought therefore, it is always considered to be fatal for the prosecution. The Apex Court in the case of Farman Ahmed v. Muhammad Inayat, **[2007 SCMR 1825]** has held in respect of a 17 hours delay in FIR provides sufficient time for deliberation and consultation when complainant has given no explanation for delay in lodging the FIR. It is enough time for complainant to fabricate the story, therefore, possibility cannot be ruled out qua false implication of the respondent. It is also settled law that unexplained delay of a 17 hours in making FIR not explained leads to inference that the occurrence was un-witnessed.

7]. It further reflects that the son of complainant through co-accused Bilal allegedly gave gold ornaments to the applicant either for sale or assessing value, so allegations levelled against the applicant in my tentative opinion, the Trial Court has to see whether Section 406 PPC is attracted or otherwise and the application of the same would be resolved by the Trial Court after recording evidence, thus matter calls for further enquiry. More so, Section 406 PPC being punishable for seven years, do not fall within the prohibitory clause of Section 497(1) Cr.P.C. The Apex Court in the case of Iftikhar Ahmed v. The State, **[PLD 2021 SC 799]**, has held in categorical terms that granting of bail in offences not falling within the prohibitory limb of Section 497 Cr.P.C. shall be a rule and refusal shall be exception and directed the Courts of Country to follow this principle in its letter and spirit because principles of law enunciates by the Supreme

Court are constitutionally binding [under Article 189] on all Courts throughout the Country. The applicant/accused is regularly attending the Trial Court and no complaint of misuse of concession of bail or tempering of the prosecution evidence has been pointed out.

8]. In view of above facts and circumstances, instant bail application is allowed; consequently, interim pre-arrest bail granted to applicant vide order dated 06.02.2025 is hereby confirmed on same terms and conditions. Applicant is directed to appear before the Trial Court on each and every date of hearing to face the trial.

9]. It need not to reiterate that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, the learned Trial Court may proceed against the Applicant, if he will be found misusing the concession of bail.

10]. This Criminal Bail Application is disposed of.

JUDGE

*Faheem/PA**

