

HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS
Crl. Bail Application No.S-111 of 2025

Applicants/ accused: 1. Allah Warayo s/o Lal Muhammad Dars.
 2. Niaz Muhammad s/o Akber Ali Soomro
 Through Mr. Satram Sonani Bheel, Advocate

The State: Through, Mr. Ghulam Abbas Dalwani, D.P.G.

Date of hearing: 10.07.2025

Date of Order: 10.07.2025

O R D E R.

Jan Ali Junejo, J. – The applicants/accused, Allah Warayo and Niaz Muhammad, have filed the instant Criminal Bail Application under Section 498, Cr.P.C., seeking pre-arrest bail in respect of Crime No.29 of 2025, registered at Police Station Islamkot, District Tharparkar, for offences punishable under Sections 379 and 408, P.P.C. Prior to approaching this Court, the applicants preferred Criminal Bail Application No.130 of 2025 before the learned Sessions Court, which was subsequently transferred to the Court of learned Additional Sessions Judge-II, Tharparkar at Mithi, where it was dismissed through a Impugned Order dated 30.04.2025. Following the dismissal of their bail application by the learned trial Court, the applicants approached this Court seeking pre-arrest bail. Vide order dated 06.05.2025, they were granted ad-interim relief, which is now fixed before this Court for confirmation or otherwise.

2. Briefly stated, the facts as narrated in the F.I.R. reveal that the complainant, Muhammad Tarique, posted as Deputy Director at the UCG Project, had deployed Iqbal S/o. Soomar Khan Rind (Security Supervisor), Jamaluddin S/o. Alam Mangrio, and Zulfiqar Ali S/o. Muhammad Hamid Soomro (Security Guards of Al-Hataf Company) to safeguard the materials lying at the project site. In view of frequent incidents of theft, the complainant also engaged Nandlal S/o. Pehlaj and Ladho S/o. Herchand as private informers to

monitor suspicious activities. On 19.04.2025 at around 2330 hours, informer Nandlal Bheel telephonically informed the complainant that Security Supervisor Muhammad Iqbal Rind, along with Security Guards Jamaluddin Mangrio and Zulfiqar Ali Soomro, in collusion with private individuals, namely Allah Warayo S/o. Lal Muhammad (former Security Supervisor), Niaz Muhammad S/o. Akber Ali Soomro, and Hamzo S/o. Rasool Bux, were stealing iron from the UCG Project premises, using a white-coloured long chassis jeep. Acting on the said information, the complainant proceeded to the scene, where, with the aid of lighting, he allegedly witnessed the aforementioned individuals loading iron materials into the said vehicle. Upon noticing the complainant and his accompanying witnesses, the accused fled from the spot with the stolen materials. The complainant later assessed that the stolen items included three iron cots, twelve iron round pipes, three complete air conditioning units, and valuable spare parts from stationary vehicles.

3. The learned counsel for the applicants contended that the F.I.R. is delayed by 18 hours without any plausible explanation, suggesting time was taken for consultation and deliberation to falsely implicate the applicants. He further argued that all the prosecution witnesses (PWs) are interested and set up by the complainant, and there is no independent witness to the alleged incident. He emphasized that the alleged offence does not fall under the prohibitory clause of Section 497(1) Cr.P.C., as the maximum punishment for Sections 379 and 408 P.P.C. does not exceed ten years imprisonment. Furthermore, he contended that co-accused persons have already been granted bail by this Court; therefore, on the rule of consistency, the applicants are also entitled to the concession of bail. Lastly, the learned counsel prayed for confirmation of bail.

4. The learned Deputy Prosecutor General frankly recorded his “no objection” to the confirmation of bail on the ground that co-accused have already

been granted bail by this Court, and the rule of consistency is applicable to the case of the applicants/accused.

5. I have carefully considered the arguments advanced by the learned counsel for the applicants as well as learned Deputy Prosecutor General. I have also undertaken a tentative assessment of the material available on record, as is permissible at the bail stage under settled principles of law. Since the applicants are implicated in offences under Sections 379 and 408, P.P.C., it is appropriate to first examine the essential ingredients of these provisions. Section 379, P.P.C. prescribes punishment for the offence of *theft*, which is defined under Section 378, P.P.C. as the dishonest taking of any movable property out of the possession of any person without that person's consent, accompanied by movement of the property with the intention of such taking. The essential ingredients of Section 379, P.P.C. are as follows:

- Dishonest intention to take property;
- The property must be movable;
- It must be taken out of the possession of another person;
- It must be taken without that person's consent; and
- There must be some movement of the property to accomplish the taking.

A tentative evaluation of the present case suggests that the applicability of Section 379, P.P.C. is not free from doubt and appears to require further inquiry. The F.I.R. was registered after an unexplained delay of approximately 18 hours, casting doubt on its spontaneity and the credibility of the narrative. Moreover, the prosecution's version primarily relies on the information provided by "spy informers", and there is a noticeable absence of any neutral or independent witness to the alleged act of theft. While the F.I.R. states that the applicants were observed loading iron material into a vehicle, the extent of their direct involvement in the *removal* or *taking* of property, particularly in the presence of security personnel, remains ambiguous. Additionally, the record indicates that no recovery of the alleged stolen property has been effected from the present

applicants, which further attenuates the prosecution's claim of their direct culpability in the offence under Section 379, P.P.C.

6. Section 408, P.P.C. pertains to *criminal breach of trust* committed by a clerk or servant. The foundational definition of criminal breach of trust is provided under Section 405, P.P.C., which occurs when a person entrusted with property, or having dominion over it, dishonestly misappropriates or converts the property to their own use, or dishonestly uses or disposes of it in violation of any legal direction or contractual obligation. The essential ingredients of an offence under Section 408, P.P.C. are:

- The accused must be a clerk or servant;
- He must be entrusted with property or have dominion over property in that capacity;
- There must be dishonest misappropriation, conversion, use, or disposal of the said property; and
- Such act must be in violation of a direction of law or a legal contract.

In the present case, the F.I.R. describes applicant Allah Warayo as a *former security supervisor*. For an offence under Section 408, P.P.C. to be attracted, it is imperative that entrustment or dominion over the property exists at the time of the alleged breach, and that such dominion arises in the capacity of a clerk or servant. The designation of "former" security supervisor clearly implies that the applicant was not holding the position at the relevant time, and thus, no relationship of trust or entrustment existed between him and the complainant at the time of the incident. Moreover, the F.I.R. does not disclose any subsisting master-servant relationship or contractual engagement that could establish the requisite fiduciary link for invoking Section 408, P.P.C. The nature of the allegations, as narrated in the F.I.R., centers primarily on theft, and not on the dishonest misappropriation of property lawfully entrusted to the applicants. Accordingly, the core elements of criminal breach of trust are not *prima facie* made out, and the applicability of Section 408, P.P.C. to the applicants' alleged conduct appears, at best, tenuous and doubtful at this stage.

7. A joint examination of Sections 379 and 408 of the Pakistan Penal Code reveals that these offenses are defined by fundamentally distinct and mutually exclusive elements concerning the nature of possession:

Therefore, the factual foundation necessary to establish the offense under one section inherently negates a core element required to establish the offense under the other. Consequently, the same act or set of facts cannot simultaneously satisfy the essential ingredients of both offenses, making them legally incompatible for application to a single transaction. Given this irreconcilable conflict in their core ingredients, specifically, whether the property is *taken from* the victim (S. 379) or *already held under entrustment* by the accused (S. 408); these provisions rest on legally incompatible premises and cannot be concurrently applied to the same factual matrix. Any assertion to the contrary would require distinct and independently proven facts establishing *both* unlawful taking *and* breach of entrustment-based dominion, a burden wholly unmet by the evidentiary record presently before the Court.

8. Moreover, it is pertinent to note that both offences under Sections 379 and 408, P.P.C. do not fall within the prohibitory clause of Section 497(1), Cr.P.C., as the punishment prescribed for these offences does not extend to death, imprisonment for life, or imprisonment exceeding ten years. In such circumstances, the settled legal principle is that grant of bail is a rule, and its refusal is an exception, which must be justified by the presence of extraordinary or aggravating circumstances. In this regard, guidance may be drawn from the judgment of the Honourable Supreme Court of Pakistan in the case of ***Muhammad Aziz alias Mana v. The State and others (2023 SCMR 1773)***, wherein it was held: “The FIR was lodged with an inordinate delay of 13 days for which the complainant did not utter a single word. The only allegation against the petitioner is that he used to purchase the stolen articles from the co-accused. Admittedly, he was not employee of the

complainant, therefore, the question of applicability of section 381, P.P.C. would be resolved by the learned Trial Court. We have been informed that all the co-accused of the petitioner have been granted post-arrest bail by the court of competent jurisdiction. In these circumstances any order by this Court on any technical ground that the consideration for pre-arrest bail and post-arrest bail are entirely on different footing would be only limited upto the arrest of the petitioner because of the reason that soon after his arrest he would be entitled for the concession of post-arrest bail on the plea of consistency. Reliance is placed on the cases reported as Muhammad Ramzan v. Zafarullah (1986 SCMR 1380), Kazim Ali and others v. The State and others (2021 SCMR 2086), Muhammad Kashif Iqbal v. The State and another (2022 SCMR 821) and Javed Iqbal v. The State through Prosecutor General of Punjab and another (2022 SCMR 1424). The maximum punishment provided under the statute for the offence under section 411, P.P.C. is three years and the same does not fall within the prohibitory clause of section 497, Cr.P.C. It is settled law that grant of bail in the offences not falling within the prohibitory clause is a rule and refusal is an exception. Liberty of a person is a precious right which cannot be taken away without exceptional foundations".

9. This Court has undertaken a careful and tentative assessment of the material available on record, including the contents of the F.I.R. and the submissions advanced by the learned counsel for the applicants, and the learned Deputy Prosecutor General. Such a tentative evaluation is permissible at the bail stage in accordance with settled principles of law. The following factors cumulatively weigh in favour of confirming the ad-interim pre-arrest bail granted to the applicants:

- The F.I.R. was registered after a delay of approximately 18 hours, without any plausible explanation offered on record. Such a delay, particularly in criminal cases, tends to cast doubt on the spontaneity and truthfulness of the allegations and suggests the possibility of deliberation and consultation before lodging the report.

- The contention that all prosecution witnesses are closely associated with or set up by the complainant, and the absence of any independent or neutral eyewitness, raises legitimate concerns. These aspects warrant further inquiry into the credibility and reliability of the prosecution's version.
- The simultaneous application of Sections 379 and 408, P.P.C., despite their mutually exclusive legal ingredients, appears to be legally inconsistent. As previously discussed, theft and criminal breach of trust are distinct offences founded on separate legal requirements, and invoking both in the same factual context without clear justification necessitates deeper judicial scrutiny at trial.
- The alleged offences under Sections 379 and 408, P.P.C., do not attract the prohibitory clause of Section 497(1), Cr.P.C., as neither carries the punishment of death, imprisonment for life, nor imprisonment exceeding ten years. Accordingly, in such cases, the grant of bail is treated as a rule and refusal as an exception, unless exceptional circumstances exist, which are absent in the present matter.
- It is a settled principle that similarly placed co-accused, whose role is identical in nature, should be treated alike in matters of bail. In the instant case, co-accused persons nominated in the same F.I.R. have already been granted bail. The learned Deputy Prosecutor General has also fairly conceded to the application of the rule of consistency in favour of the applicants, thereby supporting parity in extending the benefit of bail.
- Given the cumulative weight of the above factors i.e. delayed F.I.R., lack of independent evidence, questionable application of penal provisions, and parity with co-accused, the case against the applicants manifestly calls for further inquiry into their precise role, involvement, and the applicability of the alleged offences. Such inquiry is well within the ambit of Section 497(2), Cr.P.C.

10. For the reasons discussed hereinabove, the pre-arrest bail earlier granted to the Applicants, Allah Warayo and Niaz Muhammad, is hereby confirmed, subject to the same terms and conditions as previously imposed. It is, however, clarified that the observations made in this order are purely tentative in nature and are confined solely to the adjudication of the present bail application and shall not influence the merits of the case during trial.

JUDGE