

IN THE HIGH COURT OF SINDH, AT KARACHI

Cr. Bail Application No. 3212 of 2025

Applicant : Makki son of Shamsul Alam,
through Mr. Wajahat Naseem Khan,
Advocate.

Respondent : The State, through Syed Bashir Hussain
Shah, Asstt. Attorney General along with
S.I. Rafia Altaf, FIA, AHTC, Karachi.

Date of hearing: 02.02.2026.

Date of Order : 02.02.2026.

ORDER

TASNEEM SULTANA, J.—Through this criminal bail application, the applicant Makki son of Shamsul Alam seeks post-arrest bail in Crime No.273 of 2025, registered at Police Station FIA, AHT Circle, Karachi, under Sections 3(2), 13/14 of the Foreigners Act, 1946, read with Sections 420, 468, 471 and 109 P.P.C. The earlier bail application bearing No.3831 of 2025 filed by the applicant was dismissed by the learned Sessions Judge, Malir, Karachi, vide order dated 08-09-2025; hence, the present application for same concession.

2. Brief facts of the prosecution case is that on 18.08.2025 the present applicant was apprehended at Jinnah International Airport, Karachi, by FIA authorities upon his arrival from Kingdom of Saudi Arabia on the strength of an Emergency Passport; that during immigration clearance the said Emergency Passport was suspected to be fake/forged, lacking essential security features and bearing affixed stamps of the Consulate of Pakistan, Jeddah, which were also suspected to be forged; that it was further transpired that the applicant's parents were Bengalis and married in Karachi; that upon enquiry and verification, the applicant was detained and subsequently the instant FIR was registered after completion of enquiry.

3. Learned counsel for the applicant contends that the applicant has falsely been implicated; that the entire case is documentary in nature and no incriminating recovery has been effected from the personal possession of the applicant; that the prosecution itself has taken inconsistent positions with regard to the travel documents, as on the one hand the Emergency Passport is alleged to be forged, whereas on the other hand official correspondence and laboratory opinion reflect that the Emergency Passport

was genuinely issued by the Consulate General of Pakistan, Jeddah, though alleged to have been tampered after issuance; that consular verification through email dated 13-11-2025 has confirmed the genuineness of the BM-series passport; that the applicant was born in Karachi, his parents were married in Karachi, and old MNICs of family members are on record, raising mixed questions of fact regarding nationality which cannot be conclusively determined at bail stage; that the applicant has remained behind bars, investigation is complete, no further custodial interrogation is required, and the case squarely falls within the ambit of further inquiry under Section 497(2) Cr.P.C.

4. Per contra, learned Asstt. Attorney General for the State opposed the instant bail application and submits that the offence relates to illegal entry and use of forged or tampered travel documents; that official communications from the Ministry of Foreign Affairs and FIA enquiry suggest that the Emergency Travel Document bearing No. ST-021013 was fake/forged or tampered; that under Section 9 of the Foreigners Act the burden lies upon the accused to establish lawful status; that the learned trial Court has already declined bail after examining the record; and that the alleged offences fall within the prohibitory clause.

5. Heard. Record perused.

6. A tentative assessment of the available record, it reflects that the prosecution case rests primarily upon documentary evidence relating to the applicant's travel documents and nationality status. The record itself discloses that there are divergent official opinions with respect to the Emergency Passport and related documents, inasmuch as one set of correspondence alleges forgery or tampering, whereas laboratory opinion and consular verification indicate that the Emergency Passport was genuinely issued by the Consulate General of Pakistan, Jeddah, though allegedly subjected to tampering after issuance. The question whether such tampering occurred, if at all, and whether the applicant had knowledge or mens rea in that regard, requires evidence and cannot be conclusively resolved at the bail stage.

7. It further appears that the applicant was born in Karachi and that his parents were married in Karachi, while certain family members were holders of old identity documents. Whether these facts establish or negate the applicability of the Foreigners Act is a mixed question of law and fact requiring determination through evidence.

8. The prosecution case, at present stage, primarily rests upon documentary material, technical opinion and official witnesses. No independent private witness of arrest or recovery has been associated. Admittedly, the base passports have been declared genuine, whereas allegation primarily relates to alleged manipulation of personalized data, which again is a matter requiring full trial, technical examination and expert evidence. The nationality aspect, in the peculiar facts of the case, appears to be an issue requiring determination after recording of evidence. No recovery of any forged instrument, stamp, or material has been shown to have been affected from the personal possession of the applicant. The investigation is documentary in nature. The prosecution has not pointed out any specific circumstance suggesting that the applicant is likely to abscond, tamper with the evidence, or influence witnesses if released on bail.

9. The offenses under sections 420 and 471, P.P.C. are bailable, insofar as the offense under section 468, P.P.C. is concerned the punishment does not fall within the prohibitory clause of section 497, Cr.P.C., therefore, prima-facie, the material currently available on the record of the case is not sufficient to say that there are reasonable grounds for believing that he has committed the alleged offenses; but there are sufficient grounds for further inquiry into his guilt in terms of Section 497(2) of Cr.P.C. On the aforesaid proposition, I am guided by the decisions of the Supreme Court in the cases of Muhammad Sarfraz Ansari Vs. The State 2021 PLD SC 738 and Malik Muhammad Tahir Vs. The State 2022 SCMR 2040.

10. As far as Section 14 Foreigners Act is concerned, the evidence against the accused is still to be evaluated and it is yet to be seen as to whether it is applicable under the attending circumstances of the case or not. In such circumstances of the case, the Supreme Court of Pakistan in the case of Haji Wali Muhammad v. The State 1969 SCMR 233 held as under: -

"As a general rule on a charge of the kind made in this case not invoking a sentence of death or transportation for life, bail should ordinarily be allowed disregarding the grounds of the seriousness or anti-social nature of the offence, unless there are strong grounds, in the shape of evidence for the belief that he is guilty".

11. The learned counsel for the applicant also placed reliance on PLD 1988 Karachi 64, wherein the accused was charged under section 14 Foreigners Order, 1951, Article 3(a), and he was allowed bail. Reliance can well be made on MLD 2017 Page 259, wherein it was held that bail cannot be denied to the accused when it is a well-settled principle of law that bail cannot be withheld as conviction in advance. The rest of the sections do not fall within the prohibition contained in section 497, Cr.P.C. Moreover, the accused/ applicant is neither required for investigation nor is a previous convict.

12. The Supreme Court in the case of Saeed Ahmed Vs. The State 1996 SCMR 1132 held as under: -

“3. The learned cosounsel for the petitioner contended that there is no prohibition for grant of bail in respect of offences mentioned above, but with mala fide intention subsequently offence under section 409, P.P.C. has also been added in order to bring the petitioner's case within the prohibitory clause of section 497, Cr.P.C. The case entirely depends upon documentary evidence which seems to be in possession of the prosecution and challan has already been submitted. The objection of the learned counsel regarding addition of section 409, P.P.C. may carry some weight while considering the bail, application. As there is no possibility of tampering with the evidence, which is entirely documentary in nature and in possession of the prosecution, in the circumstances, we convert the petition into an appeal and allow it, and grant bail to the petitioner on furnishing one surety in the sum of Rs.50,000 to the satisfaction of the Deputy Registrar, Supreme Court, Lahore.”

13. In view of the above facts and circumstances, instant bail application is allowed and the applicant Makki son of Shamsul Alam, is admitted to post-arrest bail subject to furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand only) and P.R bond in the like amount to the satisfaction of learned trial Court. Who shall ensure that the surety must be local, reliable and men of means and he shall ensure his attendance on every date of the trial proceedings so that the trial is not delayed on his account. In the event he fails to do so, the F.I.A. shall be at liberty to apply to recall this order.

14. The observations made herein are tentative in nature and shall not influence the learned trial Court in any manner.

JUDGE

