IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application No.3057 of 2026

Applicant	:	Faiza Noor D/o Zakir Hussain *Through* Mr. Moulvi Iqbal Haider, Advocate.
Respondent	:	The State *Through* Mr. Qamaruddin Nohri, A.P.G. Sindh duly assisted by Mr. Muhammad Qamar-ul-Hassan Advocate for the Complainant.
Date of hearing	:	05.11.2026
Date of Order	:	05.11.2026

O R D E R

KHALID HUSSAIN SHAHANI, J. **-** The applicant seeks post-arrest bail in a case bearing Crime No.434/2026, registered at Police Station Shah Faisal Colony, Karachi, for offence under Sections 380, 454 and 34 PPC, following dismissal of her earlier bail applications by the learned Judicial Magistrate and XII-Additional District & Sessions Judge, Karachi East, through orders dated 08.09.2026 and 14.09.2026, respectively.

2. The prosecution alleges that on 29.08.2026, while the complainant and her family were away, unknown persons broke into their house and removed gold ornaments, cash, foreign currency and property documents. Upon returning, the complainant discovered the theft and, following her own inquiry, nominated the applicant, her niece, along with two others. The FIR was lodged on 31.08.2026. The prosecution further claims recovery of approximately fifteen tolas of gold ornaments at the applicant's pointation.

3. Learned counsel for the applicant contended that she is a young woman, falsely implicated owing to an inheritance dispute; that neither the complainant nor any witness saw her committing the offence; and that her nomination, after an unexplained delay of two days, rests upon suspicion. He further questioned the alleged recovery for want of independent witnesses and disputed the chronology of arrest, maintaining that the applicant was taken into custody during the intervening night of 29/30.08.2026 but formally shown arrested on 01.09.2026. Reliance was placed upon the complaints submitted by her mother and the purported CCTV material. Conversely, learned counsel for the complainant and learned DPG opposed bail on the grounds of specific nomination, recovery

of stolen ornaments, and seriousness of the accusation and absconding of the co-accused.

4. Heard and perused the record. At the outset, Section 380 PPC, carrying imprisonment up to seven years, falls outside the prohibitory clause of Section 497(1) Cr.P.C., whereas Section 454 PPC, when house-breaking is committed with intent to commit theft, provides punishment extending to ten years. Nevertheless, the applicant being a woman, her case attracts the first proviso to Section 497(1) Cr.P.C., which confers a distinct statutory concession even in offences otherwise falling within the prohibitory clause. The Supreme Court in 2023 SCMR 887[1], following PLD 2022 SC 764[2], has held that bail to a female accused is ordinarily to be granted and may be refused only upon exceptional circumstances indicating likelihood of absconding, tampering with prosecution evidence, influencing witnesses or repetition of the offence.

5. Tentative assessment of the record reveals that the occurrence was not witnessed by the complainant, who nominated the applicant after an inquiry conducted on her own. The source and evidentiary worth of such information remain to be established. The FIR was registered two days after discovery of the occurrence, while the defence has disputed the chronology of arrest by referring to complaints against police officials and purported CCTV material. Although these allegations cannot be accepted as established without proof, they raise questions requiring examination at trial. The asserted family dispute, being contested, also calls for evidence rather than a conclusive finding at this stage.

6. The prosecution principally relies upon recovery of gold ornaments allegedly affected at the applicant's pointation. However, the circumstances of recovery, non-association of independent witnesses, identification and ownership of the ornaments, and their nexus with the reported theft remain matters for evidentiary scrutiny. Recovery, however incriminating it may appear, cannot by itself justify denial of the statutory concession available to a female accused in the absence of exceptional circumstances. In 2022 SCMR 609[3], the Supreme Court, while granting bail to a female accused in a theft case involving gold ornaments, held that the evidentiary worth of articles recovered pursuant to disclosure was appropriately determinable at trial.

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[1] Mst. Ghazala v. The State and another
[2] Tahira Batool v. The State and another
[3] Mst. Kainat Bibi v. The State and another

7. The record further reflects that submission of the police report under Section 173 Cr.P.C. remained delayed, prompting proceedings in Constitutional Petition No.D-7042/2026, wherein this Court, on 27.10.2026, called for the relevant police papers. More importantly, nothing has been pointed out suggesting that the applicant is a previous convict, has attempted to influence witnesses, or is likely to abscond, tamper with evidence or repeat the offence. The alleged recovery is already in police possession, while the absconding of a co-accused cannot, without an individualized assessment, justify continued incarceration of the applicant. Mere gravity of accusation or pendency of investigation is insufficient to displace the statutory protection contemplated by the first proviso to Section 497(1) Cr.P.C. The courts below, while principally relying upon nomination and recovery, did not adequately address these controlling considerations.

8. In PLD 1995 SC 34[4], the Supreme Court held that bail in offences outside the prohibitory clause is the rule and refusal an exception. The principle assumes greater significance in the case of a female accused by virtue of the first proviso to Section 497(1) Cr.P.C., as explained in Mst. Ghazala (supra). In the present case, the prosecution has failed to demonstrate any exceptional circumstance justifying departure from that rule. The disputed aspects of nomination, arrest and recovery additionally require further inquiry within the contemplation of Section 497(2) Cr.P.C. Consequently, the applicant's continued detention would serve no useful purpose.

9. For the foregoing reasons, this application is allowed. Applicant Faiza Noor is admitted to post-arrest bail, subject to furnishing solvent surety in the sum of Rs.100,000/- and P.R. bond in the like amount to the satisfaction of the learned trial Court. Any misuse of the concession shall entitle the prosecution to seek cancellation of bail in accordance with law.

10. The observations made herein are tentative, confined exclusively to the disposal of this application, and shall not prejudice either party at trial.

J U D G E

[4] Tariq Bashir and 5 others v. The State