

# IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

## Crl. Bail Application No.S-557 of 2025

Applicant: Fayyaz son of Ali Hassan Otho through  
Mr. Ashique Hussain D. Solangi, advocate.

For the State: Ms. Sana Memon, Assistant P.G.

Date of hearing: 26-08-2025

Date of Order: 26-08-2025

### ORDER

**Jan Ali Junejo, J.** – The applicant/accused, namely Fayyaz son of Ali Hassan Otho, has applied for post-arrest bail under Section 497 Cr.P.C in Crime No.04 of 2025 registered at Police Station Mahi Otho @ Karampur for the offence under Section 25 of the Sindh Arms Act, 2013. His earlier bail application before the learned Additional Sessions Judge, Sehwan, was declined vide order dated 09.05.2025.

2. The prosecution case, as set forth in the FIR lodged by complainant SIP Bashir Ahmed Solangi, SHO Police Station Mahi Otho, is that on 25.03.2025 during interrogation of the present applicant Fayyaz son of Ali Hassan Otho, who was already in custody in connection with Crime No.03/2025 of the same Police Station, the applicant allegedly confessed and volunteered to produce the weapon used in the said occurrence. It is alleged that in pursuance of such disclosure, the police party accompanied by mashirs proceeded towards the northern side of Karampur near Sim Nala, where the applicant pointed out and produced one “big mouser” wrapped in a plastic shopper. The weapon was sealed on the spot in the presence of mashirs and, on such recovery, the present FIR being Crime No.04/2025 was registered against the applicant under Section 25 of the Sindh Arms Act, 2013.

3. Learned counsel for the applicant submitted that the applicant is innocent and has been falsely implicated in this case, which is nothing but a continuation of the earlier case registered against him. He argued that the alleged recovery has been foisted upon the applicant at a time when he was already in police custody, thus rendering such recovery doubtful. It was further contended that all the witnesses cited are police officials except the mashirs, who are stock witnesses of the police and not independent persons of the locality, hence the mandatory provision of Section 103 Cr.P.C has not been complied with. Counsel emphasized that nothing incriminating was recovered from the direct and exclusive possession of the applicant, rather the recovery has been shown from an open place which, at best, creates a case of further inquiry under Section 497(2) Cr.P.C. It was further urged that the applicant is in custody since long, is no more required for investigation, and the trial is likely to take sufficient time. He undertakes not to misuse the concession of bail, contending that in the given circumstances, the case against the applicant calls for extending the benefit of bail as a rule while jail is an exception.

4. Per contra, learned A.P.G., vehemently opposed the grant of bail. It was argued that during interrogation, the applicant voluntarily led the police party to the recovery of the unlicensed weapon, which was duly sealed in the presence of mashirs, and such recovery connects the applicant directly with the commission of the offence. She maintained that the recovered weapon is linked with a heinous crime registered against the applicant in the connected case, thereby establishing his culpability. It was further contended that the offence under Section 25 of the Sindh Arms Act, 2013 is a serious offence falling within the prohibitory clause of Section 497 Cr.P.C., and given the gravity of allegations as well as the recovery of the crime weapon, the applicant does not deserve the concession of bail at this stage.

5. I have given my anxious consideration to the respective arguments advanced by the learned counsel for the parties and have carefully gone through the available record with the tentative assessment permissible at bail stage. From the material so far collected, it prima facie appears that the alleged recovery has been shown at the instance of the applicant when he was already in police custody in connection with another case. Such recoveries are always to be appreciated with great caution, particularly at the bail stage, as the possibility of foisting or planting of alleged crime weapon cannot be ruled out. It is also significant to note that the alleged recovery is not from the direct and exclusive possession of the applicant but from an open place allegedly pointed out by him, which diminishes its evidentiary value and makes its credibility a matter to be determined at trial. Further, the applicant has been assigned the role of making aerial and ineffective firing in the main case, and it is yet to be judicially determined during trial whether such act was actually committed and, if so, whether it endangered human life or not. At this stage, the benefit of doubt in respect of such allegation must go to the accused. Moreover, the alleged mashirs of recovery proceedings are not independent witnesses but persons closely associated with the police, which casts doubt on the impartiality of the recovery proceedings. The non-association of private, respectable, and independent witnesses of the locality, despite availability, creates further infirmity in the prosecution case. It is settled principle that where the case calls for further inquiry within the contemplation of Section 497(2) Cr.P.C, the concession of bail is to be granted as a rule and refusal is an exception. The offence under Section 25 of the Sindh Arms Act, 2013, though not to be taken lightly, does not entail capital punishment such as death or imprisonment for life; rather, it provides for a sentence which may extend up to ten years. However, the exact applicability of the provision and the extent of liability of the applicant are matters to be determined at the stage of trial.

The applicant has remained behind bars since his arrest, is no longer required for investigation, and there is no likelihood of tampering with police evidence as all the witnesses are official in nature. The conclusion of trial is likely to take considerable time, and continued incarceration of the applicant without a final determination would amount to punishment before conviction, which is against the settled principles of criminal jurisprudence. In these circumstances, the case against the applicant requires further inquiry into his guilt within the meaning of Section 497(2) Cr.P.C. Furthermore, in the connected case, the applicant has already been found entitled to the concession of bail, which fortifies his entitlement to bail in the present case as well. Thus, on tentative assessment, the applicant has succeeded in making out a case for grant of post-arrest bail. In the case of *Ilaf Ahmed v. The State (2022 MLD 1367)*, a learned Single Bench of this Court granted bail to the applicant in an offence under Section 25 of the Sindh Arms Act, 2013, on similar grounds, where the recovery of weapon was shown in connection with a case of aerial and ineffective firing upon the police.

6. For the foregoing reasons, the instant bail application is allowed. The applicant/accused Fayyaz son of Ali Hassan Otho was admitted to post-arrest bail in Crime No.04/2025 registered at Police Station Mahi Otho @ Karampur for offence under Section 25 Sindh Arms Act, 2013, subject to furnishing solvent surety in the sum of Rs.100,000/- (One Lac only) and PR bond in the like amount to the satisfaction of learned trial Court and these are the reasons of my short order dated 26.08.2025. The observations made hereinabove are tentative in nature and shall not prejudice the case of either party at trial.

**JUDGE**