

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No. S-134 of 2025

(Atta Muhammad @ Atto Shaikh Vs. The State)

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| Date | Order with signature of Judge |
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- 1. For Orders on office objection.
- 2. For hearing of bail application.

ORDER.

02-06-2025.

Mr. Muhammad Ali Napar and Mr. Danish Ali Bhatti, Advocate for the applicant.

Mr. Shafi Muhammad Mahar, Deputy, P.G for the State.

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Ali Haider 'Ada',J:- Through this bail application, the applicant/accused Atta Muhammad alias Atto, son of Bahadur alias Bhooral, by caste Shaikh, seeks post-arrest bail in Crime No. 01/2023, registered under Section 8(1) of the Sindh Public Property (Removal of Encroachment) Act, 2010 at Police Station Anti-Encroachment Force, Shikarpur. His earlier bail application was dismissed by the learned Special Court for Sindh Public Property (Removal of Encroachment), Sukkur, vide order dated 22.01.2025. Hence, he has filed the present bail application.

2. Brief facts of the prosecution case are that the complainant, Raham Ali Mukhtiarkar Shikarpur, lodged the FIR on 21.09.2023, alleging that in compliance with the judgment dated 27.04.2023 passed by the Honourable High Court of Sindh, Sukkur Bench, in CP. No. 92/2020, the minutes of the Criminal Justice Coordination Committee meeting dated 10.01.2023, and the letter issued by the Assistant Commissioner, Taluka Shikarpur, dated 20.09.2023, it came to light that certain individuals had illegally encroached upon government land, specifically Chinangi Maqal, City Survey No.

41/2/1.14/2/2, measuring approximately one acre. The said land was allegedly unlawfully occupied by Hameed, Atta Muhammad (Present applicant), Bagan, Dado alias Wadan all by caste Shaikh, as well as Gono Brohi and Karim Dino. They had constructed houses on the said land. The complainant served them with notice under Section 3(1) of the Sindh Public Property (Removal of Encroachment) Act, 2010, vide Notice No. MKR-SHP/1053 dated 19.09.2023, issued through Abdul Shakoor Memon, City Surveyor, Shikarpur. However, the accused persons refused to receive the notice, which was subsequently pasted on the walls of the encroached structures and photographs were taken. The officials also verbally informed the alleged encroachers multiple times to vacate the property, but they failed to comply. Consequently, on receiving instructions from the Assistant Commissioner, Shikarpur, vide letter No. AC/SM-SHP-427 dated 20.09.2023, the complainant conducted an operation to remove the encroachment or construction, successfully vacated the land and informed the higher authorities accordingly. So, being authorized lodged the present FIR.

3. Learned counsel for the applicant/accused contends that the applicant has been falsely implicated in the present case. He submits that no specific portion of the land has been identified in the FIR or supporting documents as having been encroached upon by the applicant. It is further argued that the mandatory procedure under the relevant law was not followed. He points out that although Section 8 of the Sindh Public Property (Removal of Encroachment) Act, 2010 prescribes a punishment ranging from a minimum of one year to a maximum of ten years, the minimum punishment should be considered at the bail stage. He finally prays for the grant of post-arrest bail.

4. Conversely, learned Deputy Prosecutor General has opposed the grant of bail on the ground that the applicant is specifically nominated in the FIR and has allegedly encroached as well constructed upon government land. He further contends that the applicant is involved in other criminal cases and one of the co-accused namely Dado alias Wadan has already been convicted in the same matter. Therefore, the applicant is not entitled to the relief claimed.

5. Heard the learned counsel for the parties and perused the material available on record.

6. To commence the reasoning, it is appropriate to draw guidance from the authoritative pronouncement of the Hon'ble Supreme Court of Pakistan in the case of *Javed Iqbal v. The State through Prosecutor General of Punjab and another* (2022 SCMR 1424), wherein it was observed that even while deciding bail, the merits of the case may be touched upon.

7. As a result, on such aspect, during perusal of the record as well as the relevant provisions of law, it appears that proceedings against encroachers are to be initiated under Section 3 of the Sindh Public Property (Removal of Encroachment) Act, 2010. **(Act-2010)**, for ready reference, the said provision is reproduced below:

2. Removal of encroachment and structures. (1) Government or any authority or officer authorized by Government in this behalf may require the person directly or indirectly responsible for encroachment to remove such encroachment together with the structure, if any, raised by him on the public property, within the period not less than two days as may be specified in the order.

Explanation: Lessee or licensee who after the expiry of the period of lease or licence or on determination of such lease or licence, continues to retain unlawfully possession of any public property shall, for the purpose of this sub-section, be deemed to be responsible for encroachment.

(2) The order under sub-section (1) may be served by-

(a) giving or tendering it to the person responsible for encroachment or any adult male person residing with him; or

(b) affixing it at a conspicuous place on or near the public property to which it relates or sending it by Registered post, UMS, TCS, or publication.

(3) If Government or any authority or officer authorized by Government under this Act is satisfied that unauthorized construction over the state land or public property is being carried out, it or he may direct the person or persons who raised or are raising the un-authorized construction, to stop the construction and the later shall stop the unauthorized construction forthwith.

(4) Whosoever including abettor disobeys the directives given to him under sub-section(3) shall be punished with imprisonment of either description for a period of six months or with fine not less than fifty thousand rupees or with both.

8. The procedure prescribed under Section 3 of Act-2010, provides specific safeguards before any removal of structure or eviction is carried out. It mandates that a notice under Section 3(1) must be issued and served upon the alleged encroacher, allowing at least two days for compliance. The law further requires that the said notice or order be affixed at a conspicuous place on or near the public property in question. Moreover, under Section 3(3), if the Authorized Officer is satisfied that unauthorized construction is being carried out on public property, he may issue an order. In case of disobedience of that order, the provisions of Section 3(4) become applicable, which prescribes a punishment of up to six months imprisonment and a fine of fifty thousand rupees.

9. Now coming to the merits of the present case, it appears from the contents of the FIR that the notice under Section 3(1) of Act, 2010 was issued to the applicant/accused on 19.09.2023. The said notice was intended to initiate proceedings against the alleged construction or encroachment and to afford the applicant an opportunity to either vacate the land voluntarily or file a review under Section 4 of the Act, if aggrieved. However, the FIR was registered on 21.09.2023, merely two days after the issuance of notice, under

Section 8 of the Act, which prescribes punishment ranging from one year to ten years. The complainant in the FIR suggests that despite issuance of notice, the applicant failed to vacate the land and continued to occupy public property. It is relevant to note that Section 3(4) of the Act specifically deals with disobedience of a stop-construction or eviction order and prescribes a penalty of imprisonment for a term which may extend to six months or with fine not less than fifty thousand rupees, or both. The legislative scheme under the Act, 2010 contemplates a graded and procedural response to encroachments. Initially, the Authorized Officer must follow the due process under Section 3 by issuing a notice, affording a fair opportunity to respond and then passing an eviction or stop-construction order. It is only upon willful disobedience of such an order that the penal provision under Section 3(4) becomes applicable. Resort to Section 8, which criminalizes the act of encroachment or unauthorized occupation with higher punishment, must be justified by clear and cogent evidence establishing that the accused person knowingly and persistently encroached upon public property after due process and lawful orders were exhausted. At this preliminary stage, without recording evidence, it is yet to be determined whether the conduct of the applicant falls within the ambit of Section 3(4), which deals with non-compliance of orders, or rises to the level of an offence under Section 8 of the Act, which involves serious violations including encroachment. This factual determination can only be made after a full-fledged trial.

10. It is also pertinent to refer to Section 4 of the Act, 2010, which provides a statutory remedy in the form of a Review petition. The said provision allows any person aggrieved by the order passed under Section 3 to file a review petition within three days of the service of such order. This remedy is

a procedural safeguard aimed at ensuring that the rights of the individual are duly protected before any coercive action is taken. The law contemplates that only after the review petition is either not filed within the prescribed period or is dismissed on merits, may the eviction of the person from the public property be lawfully carried out. Therefore, the timeline between issuance of notice, filing (or non-filing) of a review and eventual eviction is of substantial legal importance. In the present case, it appears that the FIR was lodged on 21.09.2023, merely two days after the issuance of notice dated 19.09.2023, without affording the applicant the full opportunity to exercise his right to review the impugned action within the statutory period of three days. This raises a serious question as to whether the procedural mandate of the Act was followed in letter and spirit before initiating criminal proceedings under Section 8. Of the Act.

11. The second important aspect concerns the authority to lodge the FIR, inquire into the matter, investigate and prosecute the offender under the provisions of the Act, 2010. The Act itself provides a self-contained enforcement mechanism and Sections 16 and 17 specifically govern the establishment and powers of the Anti-Encroachment Force. For ready reference, the said provisions are reproduced below:

*16. **Establishment of Anti- Encroachment Force.** The orders passed under sections 3, 4, 5 and 13 of this Act shall, if necessary, be got executed through the Force.*

17. Government may for the prevention of encroachment on public property, to retrieve the possession from the land grabbers and trespassers and to enforce the provisions of this Act, establish an Anti Encroachment Force which shall comprise of the following Senior and junior ranks officers, notified by Government:-

SENIOR RANK

i. Director General of Anti-Encroachment Force.

ii. Director of Anti-Encroachment Force in each district who is preferably a law graduate.

JUNIOR RANK IN EACH DISTRICT

- i. Inspector of Anti Encroachment Force, who is atleast a graduate.*
- ii. Sub-Inspector of Anti-Encroachment Force;*
- iii. Ten Constables who are atleast matriculate, provided that in the City District Karachi there shall be three Anti Encroachment Forces.*

12. Further guidance is provided under Section 19 of the Act, 2010, which specifically authorizes the Anti-Encroachment Force to perform essential functions under the Act. For clarity, the section is reproduced as under:

19. Functions of the Force. *The force shall-*

- (a) lodge F.I.R., inquire into, investigate and prosecute all offenders relating to, encroachments, unauthorized occupation of any public property including an attempt or conspiracy to commit, or an abetment of any such offence or any offence committed under this Act;*
 - (b) retrieve possession from the encroachers and trespassers;*
 - (c) arrange and coordinate training of staff;*
 - (d) perform any other related functions which may be assigned to it by Government;*
 - (e) use such arms, ammunition and equipments as are supplied to them by Government through the Director General or Director for the purpose of this Act.*
- Functions of the Force. 20*

13. A plain reading of Section 19 of Act, 2010 clearly indicates that the power to initiate criminal proceedings, including lodging of FIR, conducting inquiries and investigations and prosecuting offenders rests solely with the Anti-Encroachment Force constituted under Section 16. This provision limits the lawful force in criminal prosecution to those formally notified as members of the Force. In the present case, the FIR has been lodged by the complainant Mukhtiarkar, who act in the capacity of an Authorized Officer for the purpose of issuing notices under Section 3 or initiating removal proceedings, the statutory power to perform police functions, including investigation and prosecution, is reserved exclusively for the designated Force. The composition of the Anti-Encroachment Force, including the

designations, powers, and jurisdiction of its members, is prescribed in Act, 2010 itself.

14. Furthermore, that one of the co-accused has already been convicted in the same case does not, by itself, create any legal bar or presumption against the present applicant/accused. As, each accused is to be held liable strictly for his own individual acts and omissions. The doctrine of individual culpability mandates that criminal liability must be established based on specific evidence against each accused person, merely because a co-accused has been tried and convicted, it cannot be presumed, particularly at the bail stage. The question of parity or similarity in role can only be determined after full evidence is recorded during trial. Until then, the benefit of doubt and the principle of bail not jail must prevail in favor of an accused whose individual role is yet to be clearly established. It is also a well-recognized legal maxim that "*Agere personaliter debet qui personaliter peccat*" meaning: *He who acts personally should personally be held responsible*. This maxim emphasizes individual liability, making it clear that a person is responsible only for their own wrongful acts, not for those committed by others.

15. In addition, the mere pendency of other criminal cases against the applicant does not, by itself, disentitle him from the concession of bail, nor does it negate the presumption of innocence guaranteed under the law. It is a basic principle of criminal jurisprudence that an accused person is to be treated as innocent until proven guilty by a competent Court of Law. The pendency of cases cannot be treated as proof of guilt, nor can it be used to prejudice the entitlement of applicant to fair adjudication at the bail stage,

particularly in the absence of a conviction. Reliance is placed upon the case of *Qurban Ali v. The State and others* (2017 SCMR 279).

16. In view of the foregoing discussion and in light of the legal and factual aspects highlighted above, the applicant/accused has succeeded in making out a case for the grant of post-arrest bail. Accordingly, the applicant is admitted to bail, subject to his furnishing a solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand only) and a Personal Bond in the like amount to the satisfaction of the learned trial Court.

J U D G E