

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Criminal Bail Application No.S-291 of 2025

Applicant : Abdul Razzak Kalwar son of Lal Bux,
Through M/s. Safdar Ali G. Bhutto and
Mushtaque Ali Langah, Advocates

Respondent : The State
Through Ali Anwar Kandhro
Additional Prosecutor General, Sindh.

Date of hearing : 16-07-2025
Date of order : 22-07-2025

ORDER

KHALID HUSSAIN SHAHANI, J.– Applicant/accused, Abdul Razzaque Kalwar, seeks post-arrest bail in a case bearing crime No.04/2022, offence under sections 161, 409, r/w section 5(2) Act-II of 1947 of PS ACE, Kandhkot. Previously bail of applicant was declined by the Court of learned Special Judge Anti Corruption Larkana vide order dated 29-05-2025.

2, The prosecution's case, as per FIR registered on March 11, 2022, at 16:15 hours by complainant Munawar Ali Pathan, Inspector at ACE Kandhkot, stems from a raid conducted at PRC Kashmore on March 11, 2022, under the supervision of Mr. Abdul Waheed Abbasi, Civil Judge & Judicial Magistrate, Kashmore. The allegations, based on reports from the District Food Controller (DFC) Kashmore @ Kandhkot, are that during Crop-2020-21, the accused, Abdul Razzaque Kalwar, while posted as Incharge Food Supervisor at PRC Kashmore, misappropriated 61,766 wheat bags (equivalent to 6676.706 M. Tons) and 123,532 bags of Bardana. This alleged misappropriation resulted in a colossal loss of Rs. 355,514,769/- to

the Government exchequer. The FIR further states, during the raid, no wheat bags or Bardana were found at the site.

3. It is pertinent to note that the applicant initially sought pre-arrest bail from the learned Special Judge, Anti-Corruption (Prov.), Larkana, which was dismissed for non-prosecution. Subsequently, after obtaining protective bail from this Court, the applicant again filed a pre-arrest bail application before the learned trial Court, which too was dismissed vide order dated May 13, 2025, leading to his custody and remand to jail. Thereafter, a post-arrest bail application under Section 497 Cr.P.C. was filed before the trial Court, which was also dismissed vide order dated May 29, 2025.

4. Learned Advocate for the applicant/accused, vehemently argued for the grant of bail, presenting several grounds. He contended that the applicant is innocent and has been falsely implicated, asserting that the alleged incident pertains to the year 2020-21, while the FIR was registered on March 11, 2022, after an inordinate delay of about two years. He submitted that the applicant is a victim of departmental intrigues and professional jealousy and despite his nomination in the FIR, no concrete material or evidence has been collected during the investigation to connect him with the alleged offence. The learned counsel further submitted that the applicant's absence was inadvertent, attributed to his wife's severe illness (Carcinoma/cancer), which required his constant attention at various hospitals. He argued that the raid was conducted in the applicant's absence, and that the DFC, along with his "front man," was responsible for the misappropriation, having pressured the applicant to sell wheat in the open market, which the applicant had refused. He claimed that the DFC, taking advantage of the applicant's absence due to his wife's illness, stole the wheat stock and then planted false reports, conducting a raid under the supervision of a

Magistrate merely as an "eyewash." Learned counsel for the applicant also contended that the accused may be admitted on bail on statutory grounds. He argued that the applicant has been incarcerated for a period that would entitle him to statutory bail under the relevant provisions of law. He asserted that the delay in the trial, coupled with the period of custody, warrants the grant of bail on this basis. In support of his contentions, the learned counsel relied upon several case laws, including 1978 SCMR 64, 1988 SCMR 1223, 1996 SCMR 11342, 2000 P.Cr.L.J 161, 2020 P.Cr.L.J 931, 2018 P.Cr.L.J 1096, and 2024 SCMR 464, and PLD 2001 SC 509.

5. Conversely, the learned Addl. P.G candidly submitted that the raid report itself is silent on certain aspects. However, he strongly opposed the bail application, emphasizing the crucial fact that the accused, after being admitted to interim pre-arrest bail by the trial court, subsequently remained an absconder from the Court of law. He highlighted that due to this deliberate abscondence, the evidence of fourteen (14) prosecution witnesses has been recorded in the absence of the accused, and thereafter, proclaimed offender proceedings were duly initiated against him. He further submitted that all the prosecution witnesses have fully implicated the present applicant/accused for committing a great loss to the Government exchequer.

6. I have heard the learned counsel for both parties at length and have meticulously perused the material available on record, including the FIR, the previous bail dismissal orders, and the arguments advanced.

7. The core of the prosecution's case revolves around a significant financial misappropriation involving public funds and property, falling under Section 409 PPC, which is an offence punishable with life imprisonment or imprisonment for ten years,

and thus falls within the prohibitory clause of Section 497 Cr.P.C. The allegations are specific, detailing the quantity of wheat and Bardana misappropriated and the precise financial loss incurred by the Government exchequer.

8. While the learned counsel for the applicant has raised the issue of delay in the registration of the FIR, it is important to note that the alleged misappropriation pertains to the financial year 2020-21, and the FIR was registered in March 2022. Such delays in cases involving complex financial irregularities and departmental inquiries are not uncommon and, at this stage, do not automatically negate the reasonable grounds for belief in the applicant's involvement. The contention regarding departmental intrigues and professional jealousy, along with the claim that the DFC was the actual culprit, are matters requiring detailed evidence and determination during the trial, and cannot be adjudicated upon at the bail stage. Similarly, the applicant's claim of having produced documents to the IO regarding the disposal of wheat, and the IO's alleged non-reconciliation, are also aspects that will be thoroughly examined during the trial. The previous trial court's dismissal order specifically noted that the applicant's statement under Section 161 Cr.P.C. indicated he had not produced any documents, and therefore, his plea seemed to be an "afterthought."

9. Most significant factor weighing against the applicant is his deliberate and prolonged abscondence from the course of justice. It is an undisputed fact that after obtaining interim pre-arrest bail, the applicant remained absent from the learned trial court, leading to his declaration as an absconder/proclaimed offender. During this period of abscondence, the evidence of fourteen (14) prosecution witnesses, including the Chowkidars of the godown, namely Talib Hussain and Abdul Mutalib, was recorded in his absence. These

witnesses have unequivocally implicated the applicant/accused in their statements under Section 161 Cr.P.C. and in their evidence before the trial court, connecting him directly to the misappropriation and the substantial loss caused to the Government. The trial court's order of May 29, 2025, explicitly stated that "deliberate long abscondance of accused from this Court also disentitle him from concession of bail."

10. Regarding the contention of the learned counsel for the applicant that the accused may be admitted on bail on statutory grounds, this argument is found to be without merit. The right to statutory bail commences after actual incarceration for a prescribed period. In the present case, while the statutory period for such an offence might be two years, the applicant has not remained continuously incarcerated for this duration. Instead, a significant portion of the period since the commencement of proceedings has been spent by the applicant as a fugitive from law, deliberately absconding from the court. Therefore, the statutory right to bail is not accessible to the applicant, as the period of abscondence cannot be counted towards the statutory period of detention.

11. The case laws cited by the learned counsel for the applicant regarding abscondence are distinguishable from the present facts. The case law 2020 P.Cr.L.J 931, concerning proclaimed offenders and voluntary surrender, does not apply here because the applicant's appearance was not voluntary but rather compelled through concerted efforts by the trial court, including communication with NAB Sukkur and initiation of CNIC blocking procedures. The ruling in 2018 P.Cr.L.J 1096, which suggests that mere abscondence might not bar bail if the accused is otherwise entitled, is also not applicable. In this instance, the applicant was not on bail granted on merits when he absconded; he was on interim pre-arrest bail, which

was subsequently dismissed on merits by the trial court. Thus, his abscondence, coupled with the dismissal of his bail on merits, becomes a crucial impediment. Similarly, 2024 SCMR 464, also relating to abscondence, does not offer relief to the applicant given the specific circumstances where reasonable grounds for belief in his involvement exist, coupled with his deliberate evasion of the judicial process, which allowed crucial evidence to be recorded in his absence. The other cited judgments, PLD 2001 SC 509, 2000 P.Cr.L.J 161, 1996 SCMR 1132, 1998 SCMR 1223, and 1978 SCMR 64, are also not relevant to the peculiar facts of this case, particularly the aspect of deliberate abscondence and the recording of evidence against the accused during that period. In this regard, I am also guided by the unreported judgment in Criminal Petition Nos. 562, 563, and 564 of 2019, decided by the Honorable Supreme Court of Pakistan on July 25, 2019. The relevant portion of the order is reproduced as follows:

"Before parting with this order, we would like to observe that these petitions seeking cancellation of the private respondents' bail are, even otherwise, misconceived because the impugned judgments passed by the High Court show that during the pendency of the proceedings before the High Court, the private respondents in these petitions had failed to appear, and resultantly, non-bailable warrants for their arrest had been issued, which could not be executed. The law already stands settled that if an accused person admitted to bail is subsequently declared a Proclaimed Offender or non-bailable warrants for his arrest are issued, then such declaration or issuance of non-bailable warrants ipso facto amounts to cancellation of that accused person's bail. A reference in this respect may be made to the case of Yousuf Masih v. The State (1987 P.Cr.L.J. 1412), Muhammad Boota v. Muhammad Arshad and another (Criminal Miscellaneous No. 1481-CB of 2009 decided by the Lahore High Court, Lahore on 09.02.2009), Sharafat Ali v. The State, etc. (Criminal Revision No. 680 of 2008 decided by the Lahore High Court, Lahore on 15.04.2009, which order was subsequently upheld by this Court through the order dated 04.06.2009 passed in Criminal Petition No. 438-L of 2009), and Atta-ur-Rehman v. Rana Phool, etc. (Criminal Petition No. 558-L of 2014 decided by this Court on 17.07.2014)."

12. This principle squarely applies to the present case, where the applicant, having been granted interim bail, subsequently

absconded, leading to his declaration as a proclaimed offender and the recording of crucial prosecution evidence in his absence. This conduct significantly disentitles him from the discretionary relief of bail. Considering the gravity of the offence, the specific allegations, the substantial loss caused to the Government, the consistent implication by prosecution witnesses, and most importantly, the applicant's deliberate and prolonged abscondence from the judicial process, there are more than reasonable grounds to believe that the applicant is involved in the commission of the alleged offence. The case, therefore, does not fall under the ambit of further inquiry as contemplated under Section 497(2) Cr.P.C.

13. In light of the foregoing discussion and the material available on record, I am of the considered view that there are reasonable grounds to believe that the applicant/accused, Abdul Razzaque Kalwar, has committed a non-bailable offence falling within the prohibitory clause of Section 497 Cr.P.C. His deliberate abscondence, which led to the recording of prosecution evidence in his absence and the completion of proclaimed offender proceedings, further disentitles him to the concession of bail. Consequently, the instant criminal bail application stands dismissed.

J U D G E

Asgar Altaf/P.A