

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail. Application No.S-768 of 2025
[Fazal @ Loung versus The State]

Applicant	Fazal @ Loung: through Mr. Imam Ali Chang advocate
Complainant/State	Smt. Dharaman: Through Mr. Altaf Hussain Khokher, DPG
Date of hearing	11.09.2025
Date of Order	11.09.2025

ORDER

TASNEEM SULTANA, J: Through this Crl. Bail Application, the applicant Fazal @ Loung seeks post-arrest bail in Crime No.348 of 2024 registered at Police Station Husri District Hyderabad under Section 382 PPC. His earlier bail application for the same relief being Crl. Bail Application No.457 of 2025 has been declined by the Additional Sessions Judge-IV Hyderabad vide order dated 08.03.2025.

2. The facts of the FIR find sufficient mention in memo of bail application, therefore, in view of the case law reported in PLD 2014 SC 458, there is no need to reproduce the same for the sake of brevity and in order to avoid repetition. However, the allegation against the present applicant is that he alongwith co-accused by show of weapons committed theft of pet/domestic animals having value of about Rs.845,000/-, one keypad mobile phone and two torches.

3. Learned counsel for the applicant contend that applicant is innocent and has been falsely implicated in present crime; that no specific role has been assigned to him; that there is delay of 16 days in registration of FIR without plausible explanation; that the entire story is fabricated and has been concocted at the behest of ASI Imamuddin with whom there is civil dispute of the applicant; that co-accused have been granted bail by the trial Court; that there is no any independent witness of the alleged incident and recovery.

4. Complainant, present in person, reposed full faith on learned State Counsel.

5. Learned DPG vehemently opposed the grant of bail on the ground that applicant has been nominated in FIR with specific; that applicant was duly identified at the spot by the complainant party; that out recovery of four goats has been effected from the present applicant; that prosecution witness have fully supported the contents of FIR; that offence alleged carries punishment upto 10 years, hence falls within the prohibitory clause; that applicant has failed to point out any malafide on part of the complainant.

6. Heard and record perused.

7. It is a well-settled principle of law that at the stage of bail the Court is not to undertake a deeper appreciation of evidence, but only a tentative assessment of the available material to determine whether a prima facie case for grant of bail is made out. Keeping this principle in view, the record has been examined.

8. Perusal of FIR reveals that applicant is specifically nominated in FIR since he was already known to the complainant party, whereas the names of co-accused persons were inserted in challan at later stage. Therefore, ground, that co-accused have been granted bail and applicant is entitled for same relief, has no force at all as the case of co-accused persons is on different footings. It also reflects that stolen four goats and mobile phone have been recovered from the possession of present applicant, coupled with the fact the one unlicensed pistol has also been recovered from the present applicant, which prime facie connects him with the commission of offence alleged as he has been alleged in FIR to have entered in the house of complainant with pistol. Further the applicant has failed to show any malafide on part of the complainant, as to why she has implicated him in this case.

9. The offence alleged against the applicant carries punishment upto 10 years and falls within the ambit of prohibitory clause. The Apex Court held in the case of *Shameel Ahmed vs. The State* (2009 SCMR 174) held that grant of bail non-bailable offence is not the right of an accused rather it is a concession. For ease of reference the relevant portion of the referred case law is reproduced herein below:

“4....Bail in a case not falling within the prohibitory clause of S. 497, Cr.P.C. --- Principles--Grant of bail in cases not falling within the domain of prohibition clause of proviso to S.497, Cr.P.C. is not a rule of universal application---Each case has to be seen through its own facts and circumstances---Grant of bail, no doubt, is a discretion granted to a Court, but its exercise cannot be arbitrary, fanciful or perverse.”

10. In the case of *Muhammad Siddique vs. Imtiaz Begum and two others* (2002 SCMR 442) it has also been held by the Supreme Court of Pakistan that bail cannot be claimed as a right even though the offence does not fall within prohibitory clause of Section 497 Cr.P.C. Relevant observations are reproduced below:

“4.....None can claim bail as of right is nonbailable offences even though the same do not fall under the prohibitory clause of section 497 Cr.P.C.”

11. Above discussion led me to hold that applicant has failed to make a case for concession of bail. Accordingly, present bail application is dismissed being devoid of merit.

12. It is, however, clarified that the observations made herein are tentative in nature and shall not prejudice the trial Court in deciding the case on merits.

JUDGE