

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail Application No.S-1354 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objections.
2. For hearing of main case.

Applicant : Muhammad Hayat son of Rora Malik
Through Mr. Muhammad Sadique Laghari,
Advocate.

The State : Mr. Bashir Ahmed Almani,
Assistant Attorney General.

Date of hearing : 13.02.2025.

Date of Order : 13.02.2025.

ORDER

Abdul Hamid Bhurgri, J.- The applicant, having failed to secure bail from the Trial Court in Crime No. 49 of 2024, registered at P.S Railway Police, Rohri, Sukkur, for offenses under Sections 420, 161, 34 PPC, read with Section 5(2) of Act-II of the Prevention of Corruption Act, 1947, has now approached this Court seeking release on bail through the present application.

2. The crux of the prosecution's case is that complainant ASI Muhammad Arif, alongwith HC Muhammad Nawaz, PC Abdul Qudoos, and HC Haji Khan, was stationed at Rohri Railway Station when they received confidential intelligence via telephone. The information suggested that certain individuals were traveling aboard Khyber Mail from Karachi Cantt Railway Station, unlawfully occupying seats without valid tickets. The individuals were allegedly facilitated by STE Nazeer Ahmed, Dining Car Manager Muhammad Hayat, and Bottler Karmat Ali, who were purportedly acting in collusion. Upon the arrival of Khyber Mail at Rohri Station, authorities discovered ten passengers without tickets, while several others were found misusing economy class seating without proper authorization. The apprehended individuals were taken to Rohri

Police Station, where their statements under Section 161 Cr.P.C were recorded. These statements implicated the applicant and his co-accused, leading to the registration of the instant FIR.

3. The learned counsel for the applicant asserted that the applicant is innocent and has been falsely implicated due to ulterior motives. It was argued that the alleged offense does not fall within the prohibitory clause of Section 497 Cr.P.C. The prosecution's case, the counsel contended, hinges solely on official witnesses, thereby eliminating the possibility of evidence tampering. Furthermore, the applicant has remained incarcerated since his arrest, and prolonging his detention serves no legitimate purpose, especially since the trial has yet to commence. The co-accused Nazeer Ahmed Langah and Karamat Ali Bhatti have already been granted bail by the Trial Court, and the sole ground for rejecting the applicant's bail plea is the alleged recovery of Rs. 75,750/- from him. Therefore, the applicant seeks parity in relief and prays for bail.

4. Conversely, the learned Assistant Attorney General (AAG) vehemently opposed the bail plea, arguing that tainted money was recovered from the applicant's possession, thereby establishing a clear nexus between the applicant and the offense. It was further contended that the offense falls within the prohibitory clause of Section 497 Cr.P.C, thus disqualifying the applicant from seeking bail. Additionally, the AAG submitted that the applicant is a habitual offender, referencing his prior arrest in Crime No.25 of 2023. Given this pattern of recidivism, the prosecution asserted that he is not entitled to bail.

5. Having heard arguments from both sides and having meticulously examined the material placed on record, the Court makes the following observations:

6. It is an admitted fact that the sum of Rs. 75,750/- was indeed recovered from the applicant's possession. However, the alleged tainted money constitutes documentary evidence, which is already in the prosecution's custody. Consequently, the possibility of evidence tampering does not arise. In this regard, reliance is placed on Saeed

Ahmed v. The State (1996 SCMR 1132), wherein the Honourable Supreme Court held:

“...As there is no possibility of tampering with the evidence, which is entirely documentary in nature and in possession of the prosecution, we convert the petition into an appeal and allow it, granting bail to the petitioner upon furnishing one surety in the sum of Rs. 50,000/- to the satisfaction of the Deputy Registrar, Supreme Court, Lahore.”

7. Section 161 PPC prescribes a maximum imprisonment of three years, whereas Section 5(2) of PCA-II, 1947, stipulates a minimum sentence of seven years, extendable up to ten years. However, while adjudicating bail applications, the Hon'ble Supreme Court has consistently ruled that the lesser sentence should be considered when assessing the prohibitory clause of Section 497 Cr.P.C. In the present case, the offense does not exceed the limits of the prohibitory clause, making the applicant eligible for bail. Additionally, the co-accused Nazeer Ahmed and Karamat Ali Bhatti have already been granted bail. Therefore, it would be manifestly unjust to deny bail to the present applicant solely on the ground of the recovered amount, particularly when the exact nature of the offense is yet to be determined at trial.

8. Furthermore, the AAG's argument regarding the applicant's prior involvement in a similar offense does not hold sufficient weight, as the applicant was discharged in that case. The applicant has been languishing in custody, and continued detention would serve no productive purpose, given that no further interrogation or investigation is required.

9. In light of the foregoing discussion, the applicant's case necessitates further judicial scrutiny, and his bail plea appears to be reasonable. Consequently, this application is allowed, and bail is granted, as per the short order dated 13.02.2025. The applicant shall be released on bail upon furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Lac Only) and P.R. Bond in the like amount, to the satisfaction of the

learned Trial Court. These constitute the reasoning behind my short order of even date.

10. It is explicitly clarified that the observations made hereinabove are tentative in nature and shall not prejudice either party's case during the trial.

Accordingly, the bail application stands disposed of.

JUDGE

Shahid

