

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

Criminal Appeal No.S-05 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
	<ol style="list-style-type: none">1. For hearing of M.A. No.530/2025 (application u/s 426 Cr.P.C).2. For hearing of main case.

26.02.2025

Miss. Falak Gul Fatima, Advocate for appellant.
Ms. Sobia Bhatti, Assistant Prosecutor General, Sindh.

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This is an application under section 426 Cr.P.C bearing M.A. No.530 of 2025 filed by appellant Asif Ali @ Asif Khan son of Zareef Khan. Learned counsel for the appellant pleads that the basic jurisdiction of the Court was wrongly exercised since lodging of FIR was not permissible but a complaint ought to have been filed, under the Special Act 2016 and in this regard, placed reliance on 2020 MLD 1629, 2020 MLD 1664 (DB) and PLD 2023 Quetta page-36. The authorization of the officers of the complainant's company not below grade-17 has also not been established by the complainant. Learned counsel further submits that in this case, admittedly, the trial and recovery were effected even before the complaint was lodged, and that too, by the officer of the company, whereas the complaint was lodged later. Further pleads that the *mushirnama* of the recovery was prepared admittedly after a day and the earlier recovery was shown as recovery during the investigation. It was further argued that not a single piece of evidence was produced by the prosecution to establish that the appellant was allegedly the owner of the restaurant, whereas the existence of restaurant and the connection of the appellant thereto, were also disputed. The absence of private witnesses was also a factor which was not considered by the learned Trial Court. Learned counsel further argued that the appellant is sole bread-earner of his entire family and he was already on bail during the trial, however based upon the impugned conviction, he was taken into custody and is in jail since then. No previous criminal record of the appellant was also pleaded. The learned counsel lastly pleads that all above legal and factual aspects were not looked into before passing the impugned judgment and the appellant may be allowed relief under section 426 Cr.P.C. She also places reliance on 2014 SCMR 671, 212 YLR 492, 2022 MLD page-1 and 1999 MLD page-1374.

The learned APG objected to the application.

The points raised by learned counsel on behalf of appellant pertain to basic jurisdiction of the learned Trial Court whereas the other points raise serious questions with

respect to maintainability of the complaint and the trial. Consequently, the operation of impugned judgment dated 18.01.2025 passed by learned Trial Court whereby sentence awarded to appellant in Sessions Case No.57 of 2014 re-The State Vs. Asif Ali @ Asif Khan and another arising out of Crime No.36 of 2024 registered under section 15 of Gas (Theft Control & Recovery) Act 2016 at the Police Station Kotri, is hereby suspended and the appellant be released on bail subject to furnishing his solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand) and P.R bonds in the like amount to the satisfaction of Additional Registrar of this Court.

Hearing of main appeal is adjourned to **11.04.2025**.

JUDGE

*Muhammad Danish**