

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.419 of 2025

Applicant : Syed Shabbir Hussain
through Mr. Asad Ali Kalwar Advocate

Respondent : The State
through Mr. Muhammad Ahmed, Assistant
Advocate General.

Date of hearing : 26.03.2025

Date of order : 03.04.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – The applicant, Syed Shabbir Hussain, seeks post-arrest bail in case bearing crime No. 298/2024, offence u/s 3,4,6 PSMA, 2018 of P.S FIA, AHT Circle Karachi,. Previous bail of the applicant was declined by the learned Judicial Magistrate Ist Judicial Magistrate Karachi Malir vide order dated 13.12.2024 and learned District & Sessions Judge Karachi Malir vide order dated 22.01.2025.

2. The brief facts leading to the prosecution's case are that on December 3, 2024, the applicant Shabir Hussain, along with Khalid Mahmood, Muhammad Kamran, Muhammad Kabir, Tariq Hussain, Muhammad Asif, Khursheed Hussain, and Shaheen Amin, was offloaded while travelling from Jinnah International Airport (JIAP) to Baku, Azerbaijan via flight number FZ-334, using Pakistani passports and e-visas. It was suspected that their ultimate destination was Malta, with the intention of illegal entry. During inquiry, it was alleged that the applicant was involved in smuggling individuals from Pakistan to Azerbaijan and onward to various European countries without legal travel documents, in exchange for substantial amounts of money. Based on these allegations, a case was registered.

3. At the very outset, learned counsel for the applicant argued that his client is innocent and has been falsely implicated. He asserted that the applicant is a victim of blackmail by AHTC Karachi, and was in possession of valid travel documents. There is no evidence on record indicating the use of forged or fake documents. Furthermore, there was a one-day delay

in the registration of the FIR without reasonable justification. The prosecution has not produced any evidence that the applicant was involved in human smuggling, was part of a criminal organization, or received any monetary transfers. The case has already been challaned, and the applicant is no longer required for investigation. Moreover, the case does not fall within the prohibitory clause.

4. Conversely, the learned AAG opposed the bail application, contending that the applicant's name is clearly mentioned in the FIR and that statements from seven victims support the prosecution's case. These statements allege that the applicant received large sums of money to facilitate their travel to Baku and subsequently to European countries, disqualifying him from the relief sought.

5. The main allegation against the applicant is his involvement in illegal human smuggling and the receipt of large sums from the seven passengers who were offloaded alongside him. However, the applicant has denied these claims. No documentary or corroborative evidence has been presented showing that the alleged victims paid money to the applicant or that he was affiliated with a criminal organization. While the prosecution claims the group was being transported to Malta and later to other European countries, no supporting material has been provided. Therefore, any such alleged intent must be assessed during trial. Additionally, the unexplained one-day delay in registration of case is detrimental to the prosecution's case.

6. Under Sections 3 and 4 of the Prevention of Smuggling of Migrants Act, 2018, the punishment ranges from 3 to 5 years. The essential elements to constitute an aggravated offense under Section 6 are absent. Even if Section 6 were to apply, which prescribes a penalty of 5 to 14 years; it is a settled legal principle that while deciding bail, the court must consider the lesser sentence. Accordingly, the present case does not fall under the prohibitory clause of Section 497(1) Cr.P.C., and in such circumstances, granting bail is the rule, and refusal is the exception.

7. In view of the above, the applicant has made out a case for further inquiry as contemplated under Section 497(II) Cr.P.C. He is, therefore, granted bail upon furnishing a solvent surety and personal bond in the sum of Rs. 200,000/- (Rupees two lacs only) to the satisfaction of the trial court.

8. The above observations are tentative in nature, which shall not prejudice the case of either party at trial

J U D G E

Shahbaz/PA