

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 618/2025.

Applicant : Asad Ali son of Yousuf Hussain,
through Mr. Aijaz Haider Mugheri, Advocate

Respondent : The State
Through Mst. Rahat Ahsan, Addl. P.G Sindh
Duly assisted by Syed Qaim Ali Shah, advocate

Date of hearing : 23.04.2025

Date of order : 30.04.2025

ORDER

KHALID HUSSAIN SHAHANI, J. The applicant, Asad Ali, seeks pre-arrest bail in a case bearing Crime No. 280/2021 of Police Station Mithadar, Karachi, for offences punishable under Sections 408, 411, 380, and 109 PPC. His plea for pre arrest bail was declined by the court of learned Additional Sessions Judge-II Karachi South vide order dated 22.02.2025.

2. Briefly, the facts culminating in the registration of the FIR are that the complainant, Shaikh Shoaib, serving as Regional Manager in a private security company for the last eleven years and posted at Building No. 187-Q, PECHS Block-2, Karachi, reported that on 06.08.2021, a cash amount of Rs. 200 million was collected from Bank Al-Falah CPC-1, I.I. Chundrigar Road, Karachi, intended for deposit at the State Bank of Pakistan. On 09.08.2021, nine sealed blue cash boxes and thirteen cash bags containing Rs. 90 million were handed over to driver Hussain Shah (Vehicle No. MNS-9046, Toyota Hilux, White, 2018 Model), CC Muhammad Saleem, and ACC Nadeem, together with the requisite documentation for deposit at the State Bank. Upon reaching the Al-Falah Head Office at I.I. Chundrigar Road, CC Muhammad Saleem attempted to deposit four cash boxes, which were returned. Subsequently, he informed Naveed Shah that driver Hussain Shah, along with the entrusted cash, had absconded. Upon search efforts, the said vehicle was found abandoned near Shakar Godown Street, with the driver's side door left open, missing Rs. 200 million in cash, two company-owned pistols (30-bore), a 12-bore shotgun, and the DVR camera system installed in the vehicle. Inquiry revealed that the driver Hussain Shah, in collusion with security guard Saif ur Rehman, had committed theft, leading to the registration of the instant FIR.

3. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated in the present case without specific allegation of direct involvement in the commission of the offence. It was argued that the applicant's name surfaced solely on the statement of a co-accused, which, standing alone, has no substantive evidentiary value under Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984. Learned counsel further submitted that the applicant was a minor at the relevant time and lacked sufficient understanding of the legal consequences of abscondence, contending that his failure to appear was neither deliberate nor motivated by malice but arose due to compelling circumstances. It was asserted that upon securing bail earlier, his subsequent abscondence was not willful. The learned counsel urged for grant of bail by relying on precedents reported as PLD 2007 Karachi 127, 2020 P.Cr.L.J 931, an unreported order of the Hon'ble Supreme Court in Criminal Petition No. 776 of 2024, and 2023 SCMR 172.

4. Conversely, the learned Deputy Prosecutor General, duly assisted by the learned counsel for the complainant, vehemently opposed the application, submitting that the applicant had previously been granted bail in Bail Application No. 86/2021 but subsequently absconded, thereby betraying the trust reposed in him by the Court. It was argued that abscondence by the accused undermines the sanctity of the judicial process and reflects an intention to evade the course of justice. It was further contended that the timing of the present bail application, filed after the conviction of co-accused persons, is suspicious and demonstrates an attempt to avoid imminent legal consequences rather than a bona fide desire to contest the allegations. Learned counsel emphasized that the applicant's prior conduct, absconding after being enlarged on bail, reflects a propensity for evading justice, and his release at this stage would seriously jeopardize the integrity of the ongoing trial. The risk of re-absconding, it was submitted, is real and substantial. Moreover, it was stressed that granting bail in such circumstances would set a pernicious precedent, emboldening other accused persons to misuse the bail process and erode public confidence in the judicial system. Reliance was placed upon the judgments reported as 2005 P.Cr.L.J 748, PLD 1985 Supreme Court 402, and 2023 MLD 520.

5. At the very outset of the hearing, this Court posed a specific query as to whether an accused who is a fugitive from law is entitled to the concession of bail. In response, learned counsel for the applicant placed reliance upon case law reported as PLD 2007 Karachi 127, 2020 P.Cr.L.J 931, an unreported order of the Hon'ble Supreme Court of Pakistan in Criminal Petition No. 776 of 2024, and 2023 SCMR 172. However, upon careful examination, it is evident that the cited precedents pertain to the grant of bail to mere absconders, wherein it was held that simple abscondence, without more, may not preclude the grant of bail where the merits otherwise favor the applicant. Much to the detriment of the applicant's case, it is imperative to underscore the critical distinction between an "absconder" and a "fugitive from law", a distinction carrying material legal consequences. Although the terms are often colloquially used interchangeably, in strict legal parlance, they entail distinct implications. An absconder is an individual who, during investigation or trial, willfully evades the judicial process by absenting himself without lawful excuse. Such abscondence may be transient, with the individual potentially returning to face proceedings. The concern with absconders generally relates to disruption or delay of judicial proceedings. Conversely, a fugitive from law is an individual who, having committed a crime or being under investigation, deliberately and persistently absents himself from the jurisdiction with the manifest intention of permanently evading prosecution. A fugitive remains beyond the reach of lawful authorities for a prolonged period and exhibits no intention of submitting to legal process. Fugitives are frequently declared proclaimed offenders under the Code of Criminal Procedure, 1898, and may be subject to international arrest mechanisms such as extradition or red notices. The opprobrium attached to fugitive status is, therefore, of a far graver character than that attached to mere abscondence.

6. Thus, while the case law cited by the learned counsel supports the proposition that mere abscondence does not invariably disqualify an applicant from bail, the present matter stands on a fundamentally different footing. Normally a fugitive cannot ordinarily claim the discretionary relief of bail, particularly pre-arrest bail, because his conduct evidences bad faith, disregard for judicial authority, and undermines the equitable foundation upon which bail jurisdiction is exercised. While the general rule is that

fugitives are disentitled to bail, limited exceptional circumstances may arise where a fugitive can still seek bail, but in case of pre arrest where a fugitive, having sullied his hands by evading justice, cannot seek equitable relief unless extraordinary justification is shown i.e. the circumstances beyond his control. The conduct of the applicant, viewed cumulatively, elevates him from the status of a mere absconder to that of a fugitive from law, a person actively and persistently defying the judicial process with no bona fide intention of returning to face trial. In such circumstances, the applicant cannot claim the equitable relief of bail, as his deliberate conduct strikes at the root of the administration of justice and undermines the efficacy of judicial proceedings.

7. A perusal of the record further reveals that the applicant was earlier admitted to bail in Bail Application No. 86/2021 upon furnishing an undertaking to cooperate fully with the trial proceedings. However, after initial participation, the applicant willfully absconded, thus evading the due process of law. His voluntary absence gravely undermined the trust reposed in him by the Court and reflected blatant disregard for judicial authority. The record also discloses that several co-accused persons have since been convicted. The applicant's conduct, absconding during the trial and seeking bail only after the conviction of co-accused, suggests a mala fide intention to evade the inevitable consequences of trial and obstruct the course of justice. Such behavior amounts to an abuse of legal process and violates the principles of fairness and good faith underpinning the criminal justice system. Moreover, the applicant's previous conduct raises a grave apprehension that, if enlarged on bail once again, he would repeat such conduct, thereby frustrating the trial and delaying the fair adjudication of the matter. Granting bail in these circumstances would compromise the integrity of judicial proceedings and set a perilous precedent, encouraging abuse of the Court's discretion.

8. It is further necessary to clarify that abscondence and fugitive status differ both in their nature and legal consequences. Abscondence refers to an act of unauthorized disappearance at a particular stage of proceedings without necessarily involving formal legal declarations, and may sometimes be temporary. In contrast, a fugitive from law denotes a continuing legal status, where the individual persistently avoids lawful authorities, typically

after formal measures such as issuance of non-bailable warrants, proclamation proceedings, or extradition requests have been initiated. Although every fugitive must have initially absconded, not every act of abscondence results in a person acquiring the formal status of a fugitive. This distinction is legally significant, as abscondence may temporarily disrupt judicial process, but fugitive status evidences an ongoing, serious defiance requiring coercive State measures to secure submission to legal proceedings.

9. The learned counsel for the applicant has further argued that the applicant's abscondence was neither willful nor deliberate. However, such an assertion is contrary to the record. It stands established that due to the applicant's prolonged and unjustified absence during trial, his earlier bail was canceled, and the surety bonds were forfeited. The applicant's disappearance was not casual or incidental but constituted a conscious and deliberate evasion of judicial process, reflecting clear disregard for the Court's authority. In this regard, guidance may be drawn from the dictum laid down by Hon'ble Supreme Court in the case of *Fawad Ali vs The State* (2019 SCMR 1641). It was held in that case: "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." Applied to the present case, *Fawad Ali's* case makes it abundantly clear that since the applicant willfully absconded after securing bail, resulting in issuance of non-bailable warrants and initiation of proclamation proceedings, his entitlement to the concession of bail automatically ceased.

10. This legal position is further fortified by judicial precedents reported as *Yousuf Masih v. The State* (1987 P.Cr.L.J 1412), *Muhammad Boota v. Muhammad Arshad* (Criminal Miscellaneous No. 1481-CB/2009), *Sharafat Ali v. The State* (Criminal Revision No. 680/2008), and *Atta-ur-Rehman v. Rana Phool* (Criminal Petition No. 558-L/2014), wherein it has been consistently reaffirmed that the abscondence of an accused and issuance of non-bailable warrants or proclamation ipso facto results in the cancellation of the earlier concession of bail.

11. Further reliance is placed on the landmark judgment of the Hon'ble Supreme Court of Pakistan in *Rana Muhammad Arshad v. The State* (PLD 2009 SC 427), which authoritatively enunciates that:

- (a) Pre-arrest bail is an extraordinary relief, to be sparingly granted in exceptional circumstances to prevent abuse of the law;
- (b) It cannot serve as a substitute for post-arrest bail;
- (c) It cannot be granted unless the accused satisfies the conditions prescribed under Section 497(2) Cr.P.C., namely existence of reasonable grounds of innocence and necessity of further inquiry;
- (d) In addition, the accused must demonstrate mala fide intent behind his intended arrest, aiming to cause humiliation or disgrace;
- (e) Critically, the accused must not have committed any act disentitling him to relief, such as being a fugitive from justice;
- (f) The accused must first approach the Court of first instance unless justified otherwise.

12. In light of the settled principles discussed above, and considering the applicant's conduct of willfully absconding, undermining the judicial process, and frustrating the course of justice, I am of the considered view that he does not qualify for the discretionary relief of pre-arrest bail. His plea of non-willful abscondence is without merit and stands rejected.

13. Accordingly, based on the facts, circumstances, and judicial precedents cited, I find that the applicant is not entitled to the concession of bail. The interim pre-arrest bail earlier granted to the applicant is recalled and his pre-arrest bail application is hereby dismissed. His bail bonds are canceled, the surety is discharged, and the applicant is taken into custody, remanded to Central Prison Karachi with the directions to the Superintendent to keep his custody and ensure the production of the accused before the learned Judicial Magistrate-XXIII Karachi South in Criminal Case No.7737/2021 for further proceedings in accordance with law.

J U D G E