

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 1005 of 2025

Applicant : Abdul Rasheed son of Muhammad Ismail,
Through M/s. Rasheed Ashraf Mughal &
Muhammad Nasir Yaseen Mughal, Advocates

Respondent : The State
Through Mr. Muhammad Ahmed, Asst.
Attorney General

Date of hearing : 25.04.2025

Date of order : 09.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – The applicant seeks post-arrest bail in a case bearing crime No. 10 of 2025, for offence under Section 4/23 of FER Act, 1947 R/w section 109 PPC. The applicant's earlier two bail applications were declined by the learned Sessions Judge, Malir, Karachi, first on 28.03.2025 as premature, and subsequently on 16.04.2025 after submission of the charge sheet.

2. As per prosecution theory, the FIA State Bank Circle Karachi initiated Enquiry No.12/2025 on receipt of credible information that the applicant Noor-ul-Haq Soomro, along with co-accused Abdul Rasheed, was engaged in illegal sale and purchase of foreign currency without lawful authorization, in violation of the Foreign Exchange Regulation Act, 1947. A raid was conducted near Malir Cantt, Karachi, where both were apprehended. Foreign and local currency, as well as mobile phones, were recovered. During initial questioning, they allegedly confessed to their involvement, and it was revealed that the applicant, a bank employee, was facilitating the transaction on behalf of a third party. Consequent upon; case was registered inter-alia on above facts.

3. Learned counsel argued that applicant has been falsely implicated by FIA officials due to mala fide motives and a desire to extract illegal gratification. It was contended that the case is baseless and lacks any substantive evidence, as the foreign currency recovered was lawfully purchased through documented means by the applicant and his family members. No alleged buyer or purchaser was apprehended at the scene, which undermines the prosecution's claim of illegal currency exchange activity. Counsel further submitted that the FIR was registered and the raid conducted in violation of mandatory provisions of the Foreign Exchange

Regulation Act, 1947, and without authorization or warrants, rendering the investigation defective. The absence of independent witnesses at a public location also casts doubt on the credibility of the recovery. It was emphasized that the alleged offence does not fall within the prohibitory clause of Section 497(1) Cr.P.C., and the case calls for further inquiry. The applicant is a resident of Karachi, has no prior convictions, poses no flight risk, and undertakes not to tamper with the prosecution evidence. Therefore, he is entitled to the concession of bail.

4. Learned Assistant Attorney General vehemently opposed the bail application, arguing that the applicant was caught red-handed in possession of a substantial amount of foreign currency, without lawful justification, and in circumstances indicative of illegal Hawala/Hundi business. The claim of lawful purchase through receipts is a factual defence, which requires verification at trial and cannot ipso facto negate the presumption arising from recovery in a covert transaction. It was contended that the absence of a buyer does not exonerate the applicant, as the offence under Section 23 of the Foreign Exchange Regulation Act, 1947, is complete upon unauthorized possession and attempt to deal in foreign currency without licence or declaration. The recovery was made in the presence of official witnesses, and Section 103 Cr.P.C. is directory in nature and not always applicable to raids conducted by specialized agencies like FIA. It was further argued that procedural lapses, if any, do not render the entire prosecution case doubtful at the bail stage. The seriousness of the offence and the larger economic implications of illicit currency movement warrant custodial investigation. Hence, no case for further inquiry is made out, and the applicant is not entitled to the relief sought.

5. In light of the submissions made by the learned counsel for the applicant and the material on record, it is evident that the prosecution has failed to present prima facie substantial or cogent evidence to substantiate the allegations against the applicant. Upon a preliminary assessment of the facts and circumstances, it is clear that the case of the applicant warrants further inquiry within the meaning of Section 497(2) Cr.P.C. The primary allegation of illegal foreign currency possession is squarely refuted by the applicant's production of valid purchase receipts from authorized channels, which include transactions by his wife and sister-in-law. These receipts are duly signed and available for verification by the State Bank of Pakistan, which exonerates the applicant from any wrongful intent in possessing the foreign currency. The currency in question has

been legally acquired, and as per Section 23(4) of the Foreign Exchange Regulation Act, 1947, the transactions conducted by the applicant are entirely permissible and lawful.

6. It is pertinent to note that the prosecution has failed to provide any direct evidence that would establish the applicant's involvement in the alleged illegal hawala or hundi activities. The FIR alleges that the applicant was involved in the illegal sale of foreign currency; however, it is critical to point out that no buyer or purchaser was apprehended at the scene, which is a glaring omission and renders the prosecution's case as dubious. In the absence of any independent evidence to substantiate the allegations of an illegal transaction, the case for bail is compelling and requires the exercise of judicial discretion in favor of the applicant. The absence of independent witnesses during the recovery and the failure to comply with the mandatory provisions of Section 103 Cr.P.C., which mandates the presence of two independent witnesses during search and seizure, further casts serious doubt on the prosecution's version. It is a matter of grave concern that the FIA failed to adhere to the procedural safeguards outlined in the law, specifically in relation to the non-compliance with the requirement under Section 19(3) of the Foreign Exchange Regulation Act, 1947. The lack of authorization from the Federal Government or the State Bank of Pakistan to initiate the investigation also speaks volumes about the defective nature of the investigation, and such procedural defects, as held in *Abdul Razzaque v. The State* (2020 MLD 1921), render the entire prosecution case suspect.

7. Moreover, the failure to obtain prior permission from the Magistrate before conducting the raid, as mandated by Section 19(3) of the FERA Act, 1947, further exacerbates the prosecution's shortcomings. As established in *2018 MLD 928 [Sindh]*, any violation of such mandatory provisions calls for a reconsideration of the legitimacy of the investigation and, consequently, the allegations leveled against the applicant.

8. The case law cited by the learned counsel for the applicant further strengthens the position that the applicant is entitled to the concession of bail. In *Zaigham Ashraf v. The State* (2016 SCMR 18), the Supreme Court emphasized that it is incumbent upon the prosecution to show "reasonable grounds" and produce sufficient material or evidence to justify the continued detention of the accused. Without such material, the detention of the accused is tantamount to an infringement of his fundamental right to liberty. The principles enunciated in *Hakim Ali Zardari v. The State* (PLD

1998 SC 1) reinforce the idea that personal liberty must not be sacrificed without sufficient grounds, particularly when no strong evidence has been adduced to establish guilt. Additionally, *Chaudhry Shujat Hussain v. The State* (1995 SCMR 1249) makes it clear that the Court must assess the facts and circumstances of the case at the bail stage only in a manner that ensures fairness, not by conducting a mini-trial. In *Alam Zeb v. The State* (PLD 2014 SC 760), it was reiterated that "reasonable grounds" must be based on legally tenable evidence, not mere presumptions or arbitrary conclusions.

9. The absence of any substantial evidence, the failure to comply with procedural safeguards, the lack of independent corroboration, and the serious flaws in the investigation process make the case for the applicant/accused one of further inquiry, as envisaged under Section 497(2) Cr.P.C. It is well settled that, at the stage of granting bail, the Court need not engage in a detailed examination of the evidence but must only ascertain whether there are reasonable grounds to believe that the accused is guilty of the offence alleged. As held in *Muhammad Sarfraz Ansari v. The State* (PLD 2021 SC 738), at the bail stage, the Court must be satisfied that there is prima facie material, which if left unrebutted, could lead to a finding of guilt.

10. The offence with which the applicant is charged under the Foreign Exchange Regulation Act (FERA) carries a maximum sentence of up to five years. While the offence is non-bailable, it falls within the non-prohibitory clause of Section 497(1) Cr.P.C. The FIA has not raised any concerns regarding the applicant being a flight risk. After careful consideration, I find no exceptional or extraordinary circumstances to warrant the denial of bail in this case.

11. It is equally important to note that the applicant is a resident of Karachi, and there is no apprehension of his absconding or tampering with the evidence. Considering the above-mentioned facts and the legal position laid down in various precedents, the applicant has made out a strong case for the grant of bail. Accordingly, in light of the defective nature of the investigation, the failure of the prosecution to present substantial evidence, and the general principles governing the grant of bail under Section 497 Cr.P.C., the application for bail is allowed, subject to furnishing solvent surety in the sum of Rs.100,000 /- (Rupees One Hundred Thousand only) and a personal bond in the like amount to the satisfaction of the trial Court.

12. The observations made herein are tentative in nature and shall not prejudice the trial court in deciding the matter on merits.

J U D G E