

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1151 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE
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Present:

Mr. Justice Zafar Ahmed Rajput

Mr. Justice Syed Fiaz ul Hassan Shah

Applicant : Salman Zafar @ Sunny son of Zafar Iqbal,
through Mr. Nazim Baig, Advocate.

Respondent No.1 : The State through Mr. Ali Haider Saleem,
Additional Prosecutor General, Sindh.

Date of hearing : 12.6.2025

Date of decision : 12.6.2025

ORDER

Dr. Syed Fiaz ul Hassan Shah, J. Through this bail application, the applicant/ accused seeks post-arrest bail in Crime No.595 of 2012 registered at police station Ferozabad, Karachi, under Sections 392, 353, 324, 34 read with Section 7 of Anti-Terrorism Act, 1997.

2. Brief facts of the case as mentioned in the FIR are that on 01.10.2012 when the complainant was going from Shahrah e Faisal towards Tariq Road at about 07:00 p.m., he stopped his motorcycle in order to take a phone call while the complainant was busy in conversation on mobile phone, suddenly two young boys aged about 22-23 years, slim body, wearing pant shirt appeared and snatched mobile phone namely Nokia-1202 on gun point. Thereafter, when the accused

were tried to escape, suddenly SHO of PS Ferozabad reached at the crime scene along with his Police party and the said culprit started firing upon the complainant and Police party. However, Police had succeeded to apprehend both the accused who disclosed their names as Ahsan son of Rehmat Ali and Sunny. The Police had also recovered one 30 bore pistol, from accused Ahsan and another 30 bore pistol from possession of accused Sunny.

3. On the other hand, the Police has also registered a separate FIR No. 597/2012 U/S: 13-D Arms Ordinance at P.S. Ferozabad was also registered against the present applicant /accused. The said case was separately prosecuted and the Court of learned XIIIth Judicial Magistrate at Karachi East in Cr. Case No. 4323/2012 has already acquitted the applicant vide order dated 15.03.2016.

4. Thereafter, the Investigation Officer submitted Charge Sheet No. 259/2012 dated 14.10.2012 U/S 392/353/324/34 PPC R/w 7 ATA and in same Challan both the accused No. 1 Ahsan Ali S/o Rehmat Ali and accused No.2 Sunny were shown in Column No. 3 i.e. on bail.

5. However, during the pendency of above said Session Case No. 1018/2012, a circular bearing No. A.E/Citation/54/2016, dated 16.03.2016 was issued from the Office of learned District & Sessions Judge at Karachi East in compliance of Judgment passed in Cr. Revision Application No. 255/2012 by this Court also reported as 2013 P.Cr.L.J. 1259 (Sindh), with direction that all cases lodged U/S 324/353 PPC read with Section 7 ATA are exclusively to be tried before the Anti-Terrorism Court.

6. Subsequently, the matter was transferred before Court of IInd Additional District & Sessions Judge at Karachi East duly empowered to proceed with the ATC cases. On 27.04.2018, learned Anti-Terrorism Court / IInd Additional District & Sessions Judge at Karachi East recorded the statement of Investigation Officer Inspector Arshad Mehmood, on the basis of report that accused are untraceable. On the same day, the Trial Court declared both accused persons as Proclaimed Offenders.

7. On 06.10.2021, the co-accused Ahsan S/o Rehmat Ali was arrested by officials of P.S. Bahadurabad U/S 54 Cr.P.C. and on 26.10.2021, after four years delay filed Supplementary Charge Sheet No. 259-A/2021 before the Administrative Judge, Anti- Terrorism Court, Karachi Division, which was accepted vide Order dated 29.10.2021 and the case was again transferred before the learned Anti-Terrorism Court No. 15 at Karachi at Special Case No. 118/2021 for disposal. Notably through the Supplementary Charge Sheet, the present applicant/ accused was declared as absconder.

8. Earlier the applicant/ accused filed Protective Bail Application before this Court bearing Cr. Bail Application No. 934/2025 which was allowed vide Order dated 11.04.2025 whereby 07 days' protective bail was granted to the applicant/ accused. However, pre-arrest bail was not confirmed by the trial Court and bail application of applicant was dismissed vide Order dated 21.04.2025 and the applicant was sent to judicial custody.

9. Thereafter, a post arrest bail application was filed on behalf of the applicant/ accused in subject Special Case No.118/2021 which was also dismissed by the trial Court vide impugned Order dated 25.04.2025.

10. We have heard the Counsel and Addl; PG Sindh and perused the record. A progressive analysis of statutory provisions governing bail reveals that superior courts have devised an intermediary approach to balance criminal jurisprudence with constitutional rights. This balance is achieved by evaluating the sufficiency of material against the bail seeker or identifying reasonable doubt, thereby turning the matter into a case of further inquiry. The courts, through their interpretations, ensure that bail provisions serve as a safeguard against undue incarceration.

11. It is settled law that where an Applicant or petitioner has not disputed the proceedings under Section 87 Cr.P.C. or the submission of the challan under Section 512 Cr.P.C or the proceedings under Section 87 Cr.P.C. remain un-contested, it is presumed that his status as a proclaimed offender was publicly known. The law aims to ensure absconders face trial rather than evade authorities, as reflected in Section 59 Cr.P.C., which allows even private individuals to arrest proclaimed offenders. Additionally, Section 87(2) Cr.P.C. mandates the public proclamation of such notices to compel attendance. The failure of Applicant or petitioner to appear before any court of law or surrender to the relevant authorities, after completing the necessary formalities, he was duly declared a proclaimed offender by the courts. As a fugitive from the law, consequently forfeited his **right of audience**. Reliance can be placed on *Awal Gul v. Zawar Khan (PLD 1985 SC 402)* *Hayat Bakhsh and I.C.A No.5696 of 2022 12 others versus State (PLD 1981*

SC 265), Ikramullah and others v. The State (2015 SCMR 1002) and Dr. Mobashir Hassan and others v. Federation of Pakistan and others (PLD 2010 SC 265).

12. The principle applies even more strictly to a noticeable absconder, as their deliberate evasion of legal proceedings further reinforces the justification for denying them relief under the law. In **Awal Gul v. Zawar Khan (PLD 1985 S.C 402)**, the Hon'ble Supreme Court held that:

“It is now well established law that a fugitive from law and Courts loses some of the normal rights granted by the procedural as also substantive law. It is also a well-established proposition that unexplained noticeable ascendance disentitles a person to the concession of bail notwithstanding the merits of the case- the principle being that the accused by his conduct thwarts the investigation qua him in which valuable evidence (like recoveries etc.) is simply lost or is made impossible to be collected (by his conduct). He cannot then seek a reward for such a conduct (in becoming fugitive from law).”

13. However, the case of the Applicant is distinguishable. In 2016, the Applicant has obtained bail from the 6th Addl; Sessions Court and thereafter the case was transferred to 2nd Additional Sessions Court and then due to judicial order. Subsequently, a new supplementary challan was submitted in the year 2021 before the Anti-Terrorism Court No.XV, Karachi. No plausible explanation or valid justification has been given by the prosecution for the delay of more than 04 years in submission of charge sheet. The malafides on the part of IO appeared on record. Apparently the IO had never tried to serve summon upon the applicant and he had placed a report in routine manner about applicant that he is untraceable.

It appears from the record that the IO deliberately failed to produce accused before the Transferee Court in compliance of Order dated 10.02.2017 passed on the charge sheet No.259/2012 by the learned 3rd Additional Sessions Judge/ ATC or before the ATC No.XV, Karachi.

14. Furthermore, the Applicant was facing trial in another Crime No. 539/2012 registered with PS Ferozabad tried by the Court of 3rd Addl Sessions Judge Karachi East and according to learned Counsel the Applicant was regularly appearing in the case until his acquittal by way of judgment dated 20.04.2018 passed in Sessions Case No.539/2012 and the malafides at the part of prosecution attributes as the police officials were very well aware about the said case and regular presence of the Applicant but no summon or warrant have served upon the Applicant after the transfer of the case to the Anti-Terrorism Court.

15. Under the framework of criminal jurisprudence and procedural law, an individual who has remained in custody for over two years is entitled to bail on statutory grounds, particularly when the delay in concluding the trial is not attributable to the applicant. We observe that the applicant had previously been granted post-arrest bail on statutory grounds, as he had been incarcerated for more than two years. Consequently, denying or refusing bail would serve no meaningful purpose, as it would only extend the applicant's undue confinement.

16. In the present case before the trial Court, the principal accused, Ahsan, was acquitted after a full trial through the judgment dated 13.04.2022. The applicant's case stands on similar grounds. It is a well-established principle of law that the benefit of doubt can be considered

even at the stage of deciding a bail application. In ***Muhammad Ijaz v. The State & Others*** (2022 SCMR 1271), the Hon'ble Apex Court held that the benefit of doubt, if established, can be extended even at the bail stage. Similarly, in ***Resham Khan & Another v. The State & Another*** (2021 SCMR 2011), the Hon'ble Apex Court reiterated that the fundamental purpose of bail is to enable the accused to answer the criminal prosecution rather than to subject them to prolonged incarceration. Every accused person is presumed innocent until proven guilty, and the benefit of doubt can be extended at the bail stage if the facts of the case so warrant. The basic philosophy of criminal jurisprudence dictates that the prosecution must prove its case beyond reasonable doubt, and this principle applies at all stages, including pre-trial and bail consideration. In ***Ali Raza v. The State & Others*** (2022 SCMR 1245), the Hon'ble Apex Court reaffirmed that the benefit of doubt could be extended to an accused even at the bail stage when justified by the facts of the case.

17. These were the reasons of our short Order dated 12.06.2025.

JUDGE

JUDGE

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