

IN THE HIGH COURT OF SINDH AT KARACHI

CrI. Bail Appln. No. S-546 of 2025

Applicant : Shafqatullah son of Ziauddin,
Through Mr. Jamal Nasir Bullo, Advocate

The State : Through Syed Naveed Ahmed Shah, DAG

Complainant : Zawar-ul- Hassan Zonal Director PTA Sukkur
a/w AE Waseem Ahmed, Associate Engineer
Through Mr. Ali Gul Abbasi, Advocate

Date of hearing : 18.08.2025
Date of order : 27.08.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicant Shafqatullah seeks post arrest bail in a case bearing Crime No.08/2025, offence under Section 03, 13, 18, 19 of PECA-2016, r/w Section 20(1), 31(1), (h) and (i) of Telecommunication (Re-organization) Act, 1996 r/w Section 109 PPC, registered at PS FIA CCRC, Sukkur.

2. Upon the written complaint of the Zonal Director, Pakistan Telecommunication Authority (PTA), Sukkur, the applicant remains in judicial custody and the investigation has culminated in the submission of an interim charge-sheet, whereafter he approached this Court against the orders of the learned Judicial Magistrate-I, Sukkur and the Additional Sessions Judge-II, Sukkur, both declining bails vide orders dated 05.05.2025 and 16.06.2025 respectively.

3. The brief facts, as narrated in the FIR and investigation record, are that the Zonal Director PTA Sukkur, Mr. Zawar-ul-Hassan, received credible intelligence that mobile handsets were being illegally tempered and IMEIs cloned at various shops in Pano Aqil. With the approval of the competent authority, he constituted a raiding party of FIA officers, assisted by Associate Engineer Muhammad Ali, to execute a search and seizure operation at Al Zaid Mobile Shop in Old Sabzi Mandi, Pano Aqil. On arrival, the team introduced itself, secured the premises, and in the presence of witnesses recovered from the shop one Dell Core i5 laptop, a USB device with CM2 software, and six mobile phones bearing assorted IMEIs alleged to have been altered or cloned. The seized material was recorded in a seizure memo. On the spot interrogation,

the accused allegedly admitted indulged in IMEI tampering and unlocking handset passwords through the said software tools. The seized items were sent for technical examination, the report of which purportedly confirmed the presence of illegal cloning software and data, thereby supporting the contents of the complaint.

4. Mr. Bullo, learned counsel argued that the applicant is innocent and has been falsely implicated with malafide intent. He pointed out that the FIR fails to mention the date and time of occurrence and does not associate any independent or private witnesses, relying solely on the complainant's subordinates. Except for two handsets lawfully purchased by the applicant, none of the recovered devices belong to him, but were indiscriminately foisted upon him by the complainant party. He contended that Sections 3, 13, 18 and 19 of PECA 2016, read with Sections 20(1) and 31(1)(h) & (i) of the Telecommunication Act, 1996, carry maximum punishments of three years and do not attract the prohibitory clause of Section 497(1) Cr.P.C., making bail a right. Emphasizing the presumption of innocence and the principle that bail is not to be used as pretrial punishment, he urged that the applicant is neither a flight risk nor a threat to the investigation, having offered solvent surety and willingly subjecting himself to any reasonable reporting conditions.

5. Syed Naveed Ahmed Shah, learned AAG duly assisted by Mr. Abbasi, learned Counsel for the complainant, countered that the offence of IMEI tampering is serious in nature, impacting national security and revenue, and that the applicant's presence at the shop where incriminating software and altered handsets were recovered, together with his alleged on the spot confession and the technical report, establish a prima facie case. He asserted that continued detention is necessary to prevent repetition, to ensure the applicant's availability for trial, and to forestall tampering with electronic evidence.

6. Mr. Zawar-ul-Hassan, the Zonal Director of PTA Sukkur, in his verbal comments, affirmed that the operation was conducted in accordance with law and under authorized powers conferred by Sections 20 and 31 of the Telecommunication Act. He clarified that the technical report, prepared by a certified PTA laboratory under the supervision of Associate Engineer Muhammad Ali, incontrovertibly demonstrated the modification of IMEIs and the presence of specialized cloning software, which undermines telecommunication security. He emphasized that such offences threaten both

consumer protection and state revenue, meriting stringent judicial scrutiny. Associate Engineer Muhammad Ali, through an affidavit, described his role in conducting the forensic examination of the seized devices. He attested to the chain of custody, the integrity of the analysis, and the methodology employed to detect cloned IMEIs. He confirmed that the technical report was prepared in the normal course and that the analysis conclusively identified tampering consistent with criminal activity under PECA.

7. Upon careful consideration of the record and arguments of learned counsel, and in light of the binding principles laid down by the Supreme Court in *Muhammad Tanveer v. The State* (2017 SCMR 733), this Court finds that the offences charged are punishable with maximum imprisonment of three years and do not attract the prohibitory clause of Section 497(1) Cr.P.C. The Supreme Court has held that where the prohibitory clause is inapplicable, the grant of bail is to be treated as the rule and refusal as the exception, and that bail cannot be withheld on mere suspicion or as a substitute for pretrial punishment. In the present case, the investigation is complete, the evidence is secured, and no independent witness threatens to be influenced. The FIR's procedural deficiencies, absence of date and time, and disputed ownership of seized devices raise substantial doubt about the strength of the prosecution's case. The applicant has local roots, has offered adequate surety, and poses no realistic risk of absconding or tampering with evidence. Being mindful of the constitutional guarantee of personal liberty, this Court concludes that exceptional circumstances justifying denial of bail are conspicuously absent. Accordingly, the applicant Shafqattullah is admitted to post-arrest bail upon furnishing solvent surety in the sum of Rs.100,000 (one hundred thousand rupees) and executing a P.R. bond in the like amount to the satisfaction of the learned trial court. In the event of breach of any bail bonds conditions, the prosecution may seek cancellation of bail. The observations made above are tentative in nature and shall not affect the case of either party at trial.

JUDGE