Form No: HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT LAHORE

JUDICIAL DEPARTMENT

Criminal Misc. No. 19851-B of 2025

(*Ali Raza v. The State, etc.*)

S.No. of order/ proceeding	Date of order/ proceeding.	Order with signatures of Judge, and that of parties or counsel, where necessary.

17.09.2025 Mr. Muhammad Ajmal Adil, Advocate with the petitioner.
Mr. Sheraz Khalid, Assistant Attorney General for Pakistan with Rizwan ASI/FIA.
Mr. Zain Qureshi, Advocate (*amicus curiae)*.
Mr. Sajjad Ali and Syed Ali Alludin, Advocates for the complainant.

Through this petition, filed under Section 498 of the Code of Criminal Procedure 1898 ("**Code**" or "**Cr.P.C**"), Ali Raza ("**petitioner**") seeks grant of bail before arrest in crime report bearing FIR No. C/630 of 2024, dated 12.11.2024, for offences under Sections 420 and 34 of the Pakistan Penal Code 1860 ("**PPC**") read with Section 5, 8 and 23 of the Foreign Exchange Regulation Act, 1947 ("**FERA**" or "**Act of 1947**"), registered with the Police Station Federal Investigation Agency("**FIA**")/FSD, District Faisalabad ("**crime report**" or "**FIR**"), which remedy was last sought from and declined *vide* order dated 07.02.2025 by the learned Additional Sessions Judge, Court of Sessions, Faisalabad.

2. The relevant synoptical facts and circumstances, yet shorn of unnecessary details, necessary for the disposal of this case are that the complainant ("**respondent No. 2**") presented a complaint before the FIA on the allegations that Muhammad Shahzad, Muhammad Naveed, and petitioner (collectively referred to as the "**accused**"), acting in connivance with each other, induced the complainant into a joint venture pertaining to amazon drop-shipping. For the purposes of

the said joint venture, the accused procured the opening of a binance account, which account was made using the email of the complainant, "Engineer08uet@gmail.com". Subsequently, the complainant transmitted funds of USDT 82,561/- through the said binance account and in addition thereto, further transmitted the amount of PKR. 1,388,600/-. Against receipt of the amount from the binance account, the accused executed a written agreement wherein it was stated that the amount transferred in USDT would be repaid within thirty (30) days. Based on the complaint of Respondent No. 2, enquiry No. 1221 of 2024 dated 11.07.2024 was initiated by the FIA/ECW, Faisalabad, wherein the FIA concluded that the accused were engaged in unauthorized and illegal trading of foreign currency, as such, the enquiry culminated in the registration of the crime report.

3. Arguments advanced by the learned counsel for the petitioner, the learned Assistant Attorney General, and the learned counsels for the complainant, along with the learned *amici curiae*, were heard at considerable length, and with their able assistance, the material available on record was scrutinized.

4. Principles, applicable to grant of anticipatory bail in a cognizable/non-bailable offence are well entrenched by now.[1] The power of this Court, as well as the learned Court of Sessions, to grant pre-arrest bail, when examined in the constitutional context of cardinal rights[2] as enshrined and (granted) to state subjects *via* the Constitution of the Islamic Republic of Pakistan 1973 ("**Constitution**"), is a check on the police power to arrest a person for oblique motives or sinister intent. The non-availability of incriminating material against the accused

[1] See "*Muhammad Islam v. The State*" (**2020 SCMR 841**).

[2] The right to life, liberty, dignity, due process, movement, and fair trial.

or non-existence of a sufficient ground including a valid purpose[3] for making arrest of the accused person in a case by the investigating officer would as a corollary be a ground for admitting the accused to pre-arrest bail, and *vice versa*. The Honourable Supreme Court of Pakistan has granted pre-arrest bail to accused persons after finding that there are no reasonable grounds for believing their involvement in the commission of the alleged offences[4] and has not required independent proof of *malafide* on part of the Police or the complainant before granting such relief.[5] Reason being that it is difficult to prove the element of *malafide* by the accused through positive/solid evidence/materials, as such, the same can be deduced and inferred from the facts and circumstances of the case and if some events hint to that effect are available, the same would validly constitute the element of *malafide*.[6]

5. In order to address the averments raised at the bar in light of the principles for grant or dismissal of bail before arrest as enunciated by the Honourable Supreme Court of Pakistan, it would be advantageous to examine the scheme of FERA. The Act of 1947, according to its preamble, is regulatory of foreign exchange, be it in dealings, import or export of foreign currency. In "*Agha Brothers Ltd. v. Habib Bank Ltd.*" (**1986 CLC 222 Karachi**), the scope of the act was addressed as under:

> '*A perusal of the provisions of Foreign Exchange Regulation Act makes clear that it controls and regulates the payment and dealing in foreign exchange and security which according to the preamble of the Act*

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[3] See "*Shahzada Qasier Arfat alias Qaiser v. The State*" (**PLD 2021 Supreme Court 708**).

[4] See "*Rizwan Iqbal v. The State*" (**2007 SCMR 1392**); "*Muhammad Gul v. The State*" (**1998 SCMR 576**); "*Zakia Begum v. The State*" **1991 SCMR 297**); "*Zakaullah v. The State*" **1987 SCMR 1720**); and, "*Muhammad Fayyaz v. The State*" (**1976 SCMR 183**).

[5] See "*Aqsa Safdar v. The State*" (**2019 SCMR 1923**); "*Darbar Ali v. The State*" (**2015 SCMR 879**); and, "*Meeran Bux v. The State*" (**PLD 1989 Supreme Court 347**).

[6] See "*Shahzada Qasier Arfat alias Qaiser v. The State*" (**PLD 2021 Supreme Court 708**); and, "*Khalil Ahmed Soomro v. The State*" (**PLD 2017 Supreme Court 730**).

> *is necessary and expedient in the economic and financial interest of Pakistan. Such control is necessary for the purposes of conserving and proper uses of the limited supply of foreign exchange available to the country. Under the Act only such persons are entitled to deal with the foreign exchange who have been specifically authorized by the State Bank of Pakistan and except with the permission of the State Bank of Pakistan no person other than authorized dealer can buy, borrow, sell or lend or exchange in foreign exchange; even any authorized dealer is not entitled to enter into any transaction at the rate of exchange other than the rate authorized by the State Bank. Therefore, the authorized dealer also has to follow the rates of exchange which is specified and fixed by the State Bank from time to time. According to section 4(3) of the Act if a person has acquired any foreign exchange then he has to abide by the conditions on which it has been provided to him and he is prohibited from using it in any other manner and if it cannot be so used or the conditions cannot be complied with such person shall immediately sell foreign exchange to an authorized dealer at the rate fixed by the State Bank of Pakistan for sale and purchase of foreign exchange*'.

Through Section 23, it provides penal consequences against any violation of its provisions or directions lawfully issued thereunder. The Act of 1947 does not empower the Central Government or the State Bank of Pakistan to take preventive action against any apprehended violation of the Act. The reasons for the absence of any such provision is not far to seek.[7] The legislature intent, that the Act of 1947 only governs "foreign exchange" and "foreign currency" is evident from Section 4 *vide* which the legislature has placed "restrictions on dealing in foreign exchange" so that no person, other than an "authorized dealer" is allowed to '*buy or borrow from, or sell or lend to, or exchange with, any person not being an authorized dealer, any foreign exchange*'. Section 5 pertains to "restrictions on payments", while *via* Section 8, restrictions have been

[7] See "*Syed Abual A'Ala Maududi v. The Central Government of Pakistan*" (**PLD 1969 Lahore 908 (dB)**).

placed on the "import and export of certain currency and bullion".

6. This Court has cautiously ruminated the material available on record and based on the tentative assessment thereof,[8] it is observed that overt act(s) as alleged against the petitioner, even if taken as gospel truth, would not attract the provisions of Section 5, 8, and 23 of FERA.

7. In order for the provision of Section 8 to be applicable, the *actus rea* of "import" or "export" of "currency" should be spelled out. The term "import" has not been defined under the Act of 1947 and despite being one of the primary subjects under the Customs Act of 1969, the term has not been defined there either. As such, reference was made to the standard dictionaries of the English language as well as the Dictionaries of Law and Legal Lexicons is made and on doing so, this Court finds that in the context of FERA, "import" with its grammatical variations and cognate expression, means bringing into the country merchandise from abroad. Thus, any goods brought into Pakistan from any place outside Pakistan are imported goods and the person who owns such goods is the importer.[9] The term "export" has also not been defined under the Act of 1947, but ordinary dictionary provides that the '*word "Export", as a verb, literally means "to carry (things or persons) out of a place, to take away, carry off, to carry or send out of a country, as goods in commerce"; and, as a noun, it means "the act of exporting; that which is exported; the commodity which 'is or may be sent from one country A to another"*'.[10] In "*Pakistan Textile Mill-Owners'*

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[8] See "*Bilal Khan v. The State*" (**2020 SCMR 937**), wherein it was held that '*At the bail stage, only a tentative assessment is to be made and deeper appreciation is not permissible*'.

[9] See "*I.T.AS. NOS.1077/KB, 1078/KB OF 1995-96 AND. 2255/KB OF 1996-97, decided on 8th May, 1998*" (**1998 PTD 2975 Income Tax Appellate Tribunal**).

[10] See "*Sapphire Textile Mills Ltd. v. Government of Sindh*" (**PLD 1990 Karachi 402**).

Association, Karachi v. Administration of Karachi" (**PLD 1963 Supreme Court 137 (5-MB)**), the larger bench of the Honourable Supreme Court of Pakistan held that '*"Import" and "export" in their ordinary and natural sense mean to bring into or to take out of or away from a particular place*'. When the aforementioned definitions of "import" and "export" are read in conjunction with the allegations levelled against the petitioner, it becomes straightaway evident that the petitioner has neither "imported", nor "exported" any "currency", on the contrary, the amount in USDT was "transferred" by the complainant, under a written agreement, *via* the binance app, which is not the same as "import" or "export", therefore Section 8 is not made out against the petitioner.

8. Insofar as the applicability of Section 5 is concerned, for the said provision to attract, there needs to be "payment". Section 5 is read together with Section 4 of the Act of 1947, it follows that the said "payment", as stipulated in Section 5, is restricted to "foreign exchange" or "foreign currency" or "foreign security". Under Section 2(c), "foreign currency" means '*any currency other than [Pakistan] currency*'; "foreign exchange" has been defined in clause (d) of Section 2 as '*foreign currency and includes 3[any instrument drawn, accepted, made or issued under 4[clause (8) of section 17 of the State Bank of Pakistan Act, 1956],] all deposits, credits and balances payable in any foreign currency, and any drafts, traveler's cheques, letters of credit and bills of exchange, expressed or drawn 5[in Pakistan] currency but payable in any foreign currency*'; while, according to clause (e) of Section 2, "foreign security" connotes '*any security issued elsewhere than 5[in Pakistan] and any security the principal of or interest on which is payable*

in any foreign currency or elsewhere than 5[in Pakistan]'. In the present *lis*, the transaction of transfer pertains to "USDT", which is a type of "crypto currency" and as such constituted a "virtual asset", and the same is not recognised as "legal tender", so as to constitute "currency" within the definition, as provided by the legislature in terms of Section 2(b). The State Bank of Pakistan clarified through circular bearing circular No. 3 of 2018 that "crypto currencies" are neither recognized nor regulated in Pakistan. Consequently, it cannot be stated that the provision of Section 5 is made out against the petitioner.

9. Albeit, the President of the Islamic Republic of Pakistan promulgated the Virtual Assets Ordinance 2025 ("**Ordinance of 2025**") which came into force on 08.07.2025, but the overt acts as alleged in the crime report occurred prior to the enactment of the Ordinance of 2025. Perusal of the Ordinance of 2025 provides that the same has not been given any retrospective effect.[11] Even if the Ordinance of 2025 was given retrospective application to past transactions, "virtual asset" is an information or code or number or token, as opposed to "currency" or "foreign currency", therefore, the same would not attract. Had the intention of the legislature[12] been for FERA to become applicable and govern "virtual assets", amendment(s) would have been made therein to reflect said intention, in absence whereof, it can safely be concluded that the provisions of FERA are not applicable to "virtual assets". Given that the provisions of Section 5 and 8 of FERA are not made out, no penal consequences

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[11] See "*Muhammad Rizwan v. The State*" (**2025 LHC 846**).

[12] See "*Federation of Pakistan v. Dewan Motors (Pvt.) Ltd.*" (**PLD 2025 Supreme Court 394**), wherein it was, *inter alia*, held the legal *maxim* "a verbis legis non est recedendum" means that there must be no departure from the words of law and that no word in statute should be treated as a certain surplusage or rendered ineffective or purposeless if Court is to carry out legislative intent fully and completely. Allowing "virtual assets" to be read into the Act of 1947 and expand on the applicability of FERA would only offend the principles of statutory interpretation, as enunciated by the Supreme Court, from time to time.

in terms of Section 23 of the Act of 1947 can be imposed on the petitioner.

10. Consequently, the element of *malafide* is conspicuously discernible from the conduct of respondent No. 2, who *ex facie* was involved in the transmission of the "virtual asset" of "USDT" and only approached the investigating agency after a business dispute arose between the parties. The recourse to invocation of the machinery of criminal law against the petitioner by respondent No. 2 showcases his malice in the given circumstances and clearly demonstrates that the same was done not for bringing a criminal to the books, but to exert pressure by way of converting a business dispute into a criminal matter. Likewise, the investigating agency appears to have acted with oblique motives, akin to those of respondent No.2, by unnecessarily incorporating the provisions of FERA as a means of harassing and humiliating the petitioner and if the provisions of the Act of 1947 were made out in the opinion of the investigating agency, then why had the complainant also not transposed as an accused and booked in the crime report because the offences attract against both parties involved in the prohibited transactions under FERA. The conduct of respondent No. 2 and the investigating agency, thus, proves the presence of *malafide*, rendering the case ripe for grant of the extraordinary remedy of bail before arrest to the petitioner.

11. Adverting next to the provision of Section 420 and 34 of the PPC, suffice to observe that Section 420 is bailable in nature and Section 34 follows the nature of the principle offence, which in this case is bailable, thus, it itself becomes bailable in nature. Withholding the

remedy of bail before arrest on the ground that the considerations for pre-arrest bail are different than grant of post-arrest bail, then the same would be only limited until the arrest of the petitioner because of the reason that as soon as he is arrested, he will be entitled for the concession of post-arrest bail due to Section 420 being bailable in nature. Reliance, if any required, is placed on "*Jamaluddin v. The State*" (**2023 SCMR 1243**); "*Muhammad Kashif Iqbal v. The State*" (**2022 SCMR 821**); "*Kazim Ali v. The State*" (**2021 SCMR 2086**); and, "*Muhammad Ramzan v. Zafarullah*" (**1986 SCMR 1380**). The Courts of this country are not meant to send the people behind the bars; rather the purpose of the entire judicial system is to protect the liberty of the citizen against whom baseless accusation has been levelled keeping itself within the four corners of the law.[13] The rationale behind this principle would be defeated if on a technical ground a person is sent behind the bars. In "*Sharaf Faridi v. Federation of Pakistan*" (**PLD 1989 Karachi 404**) it was held that '*Judiciary has been termed as a watch dog and sentinal of the rights of the people and the custodian of the Constitution. It has been described as "the safety valve" or "the balance wheel" of the Constitution*'. The investigating officer has already verified the version of the petitioner, therefore, sending the petitioner behind bars at this stage would cause irreparable loss to his reputation and would serve no useful purpose.

12. In view of the deliberation made hereinabove, this petition is **allowed**, and the pre-arrest bail already granted to the petitioner is **confirmed**, subject to furnishing bail bonds of PKR.1,500,000/- (Rupees One Million Five Hundred Thousand Only) with two sureties

[13] See "*Jamaluddin v. The State*" (**2023 SCMR 1243**).

in the like amount to the satisfaction of the learned Trial Court.

13. Before parting ways with this order, it is clarified that the observations made herein are tentative in nature and confined solely to the adjudication of this petition, having no nexus nor bearing on the trial proceedings, which shall be conducted independently and decided/concluded strictly on the basis of evidence and merit.

(MUHAMMAD JAWAD ZAFAR)
JUDGE

Approved for Reporting

JUDGE

*Ejaz**