IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Sardar Tariq Masood
Mr. Justice Mazhar Alam Khan Miankhel

CRIMINAL PETITION NO.170-L OF 2025
(On appeal against the order dated 21.01.2025 passed by the Lahore High Court, Lahore in Crl. Misc. No.74957-B/2024)

Muhammad Amjad Naeem ... ... Petitioner

VERSUS

The State thr. PG Punjab and another ... ... Respondents

For the Petitioner(s) : Mr. Waqar Ahmad Hanjra, ASC
(through video link from Lahore)

For the State : Mr. Muhammad Jaffar, Addl. P.G, Pb.
Mr. Rizwan, DSP
Mr. Shahbaz SI
(through video link from Lahore)

Assisted by : Mian Johar Imam Law Clerk
Mr. Habib Law Clerk

Date of Hearing : 23.04.2025

JUDGEMENT

Sardar Tariq Masood, J. Through the impugned judgment dated 21.01.2025, the petitioner was declined post-arrest bail in case FIR No.207/2022 dated 28.02.2022, registered at Police Station Cantt District Gujranwala, under section 406 of the Pakistan Penal Code (**P.P.C**); hence, this petition for leave to appeal.

2. Briefly stated, the facts of the case as alleged in the FIR are that the complainant was running an automobile showroom by the name of Defense Motors. On 04.10.2021, the petitioner and a co-accused purchased and took a vehicle, owned by one Muhammad Shakeel, from the complainant's showroom after paying part payment of the sale amount with a promise to pay the remaining amount within one month and both parties entered into a written agreement dated 06.10.2021 in this regard. In a similar fashion and on the same terms, the petitioner purchased a second vehicle from the complainant's showroom after paying part

payment through an agreement dated 19.11.2021. On 30.10.2021 the petitioner purchased a third vehicle from the complainant's showroom after paying part payment with a promise to pay the remaining amount within a month. Lastly, as per the complainant's story, the petitioner came to the complainant's showroom on 02.01.2022, promised the complainant to pay all remaining dues by 03.01.2022 and took another vehicle from the complainant's showroom, undertaking to show the same at different showrooms for the purpose of sale. However, when the complainant tried to contact the petitioner after some time, he failed to do so and found out that the petitioner had misappropriated all the vehicles of the complainant. The details of all said vehicles, as given in FIR No.207/2022, are as follows:

Sr No.	Vehicle Detail	Registration Number	E-Stamp	Date of Transaction	Total Price	Partial Payment
1	KIA Sportage	ACH/443	PFCFC8BA09169FD3 Dated 06.10.2021	04.10.2021	58,00,000/-	10,00,000/-
2	Vezel	Applied For	9530DCF440CB24D2 Dated 19.11.2021	19.11.2021	41,00,000/-	10,00,000/-
3	Corolla Altas	AVG690	-----	30.10.2021	39,00,000/-	12,00,000/-
4	Toyota Corolla GLI Model 15	LEE-15-1202	-----	02.01.2022	-----	-----

3. Learned counsel for the petitioner contended that from the contents of the FIR, offence punishable under section 406 P.P.C is not made out against the petitioner and additionally, the offence does not fall within the ambit of the prohibitory clause of section 497(1) Cr.P.C. He has also contended that despite of being on physical remand and behind the bars for a considerable period of time, none of the vehicles mentioned in the FIR have been recovered from the petitioner. Lastly, he pointed out that the FIR was lodged after a considerable delay of 5 months and argued that the above said circumstances entitle the petitioner to post-arrest bail.

4. On the other hand, the learned counsel for the complainant has vehemently opposed the instant petition. He contended that all the vehicles in question were handed over and entrusted to the petitioner by the complainant as 'amanat' but the petitioner dishonestly misappropriated the same. He argued that the vehicles were given to the petitioner as a trust (amanat) and the said fact is explicitly stated in the FIR. As such, the offence under section 405 P.P.C is made out and section 406 P.P.C is fully attracted in the circumstances of this case. However, when the learned Addl. PG was confronted with as to whether an offence

under section 405 P.P.C is made out against the petitioner, he concedes that the requisite elements of section 405 P.P.C are absent in this case and, at most, an offence under section 420 P.P.C is made out from the contents of the FIR.

5. In order to properly address the controversy pertaining to the applicability of section 406 P.P.C to the facts of the present case, we find it proper to refer to section 405 P.P.C, which defines criminal breach of trust and is thus, relevant for our present purpose:

> ***405. Criminal breach of trust.*** *Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".*

A plain reading of aforesaid section reveals that, there are two requisite elements which are necessary to establish a case of criminal breach of trust. Firstly, the accused must have been entrusted with a property as trust (amanat), or must have dominion over it as trust (amanat). Secondly, after such entrustment or dominion is created, the accused must have breached that trust by either dishonestly misappropriating or converting the property to his own use, or dishonestly using or disposing of it in violation of any direction of law, an express or implied legal contract related to the discharge of the trust, or willfully allowing another person to do any of these acts. Both of these elements need to be present in order to constitute criminal breach of trust, as was held by this Court in cases reported as ***Abdul Rashid Nasir v. The State*** (2009 SCMR 517) and ***Ali Raza v. The State*** (2022 SCMR 1223).

6. The term 'entrustment', as used in section 405 P.P.C, means that a property is given to a person as a trust (amanat), whereby, a confidence is reposed in the recipient person and he is obligated to return the **same** to person making the entrustment. The attachment of this obligation in the entrustment implies that the ownership of the property in question remains with the person who has given the property and has not been

transferred, in any manner, to the person receiving the property, who is only temporarily given possession/custody of the entrusted property for a specific purpose and the **same** property is to be returned by the said person. The entrusted property cannot be used by or disposed of in any other manner or for any purpose other than as was decided by the person making the entrustment. In this manner, entrustment creates a fiduciary relationship between the giver and receiver of the entrusted property. However, this does not automatically imply that entrustment has to comply with the technicalities of trust law. This position has been affirmed in several judgments and reference in this respect may be made to the cases reported as ***Zahid Jameel v S.H.O. and 2 others*** (2008 YLR 2695 Lahore)**,** ***Shahid Imran v The State and others*** (2011 SCMR 1614) and ***Muhammad Ali v. Samina Qasim Tarar and others*** (2022 SCMR 2001).

7. It is also trite law that the term 'entrustment' is used in a broad sense under section 405 P.P.C and therefore, it encompasses a wide variety of contexts in which a property is handed over by an owner to a recipient person as trust (amanat). This is evident from the illustrations provided in section 405 P.P.C, which demonstrate various situations wherein the offence of criminal breach of trust can be committed. Reference in this regard can also be made to ***Muhammad Ali*** *(ibid)*, wherein this court was pleased to hold that:

> *8. .....**Expression entrustment with the property or any domain over the property has been used in a broader sense under section 405 P.P.C. It has wide and different implications in different context.** While expression 'trust' in section 405 PPC, is a comprehensive expression and has been used to denote various types of relationships, like relationship of trustee and beneficiary, bailor and bailee, master and servant, pledgor and pledgee.*

An entrustment can arise in any situation wherein property has been entrusted in the above discussed manner leading to the creation of a fiduciary relationship between the giver and recipient of the entrusted property. However, there are a number of situations in which no entrustment is made, thereby excluding the possibility of the commission of criminal breach of trust as defined under section 405 P.P.C. Foremost among such situations are those in which money or property is invested, sold or given for a business purpose entailing a promise of profit.

8. In the case reported as ***Shahid Imran*** *(supra)*, this court has clearly dilated upon the evident distinction between investment of property and entrustment of property, ruling that an investment of property does not create entrustment of property:

> *3. ..... A perusal of the F.I.R. registered in this case clearly shows that the complainant had given the above mentioned sum of money to the petitioner by way of an investment in a business venture and not by way of entrustment.* ***The law clearly recognizes a distinction between payment/investment of money and entrustment of money or property as in the former case the amount of money paid or invested is to be utilized for some purpose whereas in the latter case that sum of money or property is to be retained and preserved for its return to the giver and the same is never meant to be utilized for any other purpose****. Recognition of this distinction stands clearly reflected in many cases decided by different courts in the Indo-Pak sub-continent and a reference in this respect may be to the cases of State of Gujarat v. Jaswantlal Nathalal (AIR 1968 SC 700), Punjab National Bank and others v. Surendra Prasad Sinha (1994 PSC (Crl) 768), Shaukat Ali Sagar v. Station House Officer, Police Station Batala Colony, Faisalabad and 5 others (2006 PCr.LJ 1900), Ghulam Ali v. Javid and another (1989 PCr.LJ 507), Nga Po Seik v. Emperor (1917 Indian Cases 824) and Kornai Lal Dutta v. The State (AIR 1951 Cal 206). These precedent cases clearly show that a mere breach of a promise, agreement or contract does not ipso facto attract the definition of criminal breach of trust contained in section 405, P.P.C. and such a breach is not synonymous with criminal breach of trust without there being a clear element of entrustment therein which entrustment has been violated.*

Therefore, in a situation where property or money is invested in a business venture it is utilized for some business purpose, whereas, in a situation of entrustment, the property in question is given for a specific purpose — namely, to be returned—and cannot be used for any other purpose by the recipient. If the entrusted property is dishonestly misappropriated and used for any other purpose, it would result in a criminal breach of trust. This Court has consistently recognized this distinction in the cases reported as ***Rafiq Haji Usman v. Chairman, NAB and another*** (2015 SCMR 1575) and ***Hashmat Ullah v. The State and others*** (2019 SCMR 1730), further endorsing the ratio decidendi of ***Shahid Imran*** *(supra)*.

9. In a similar fashion, it is also trite law that where money or property is given as part of an agreement to sell or in the due course of a transaction of sale, the same does not amount to an entrustment. In the case reported as ***Rafiq Haji Usman*** *(supra)*, this Court has clearly laid out the position of law on this aspect:

> *4. .....From the above it is clear that an essential element for making out and establishing a case of criminal breach of trust is the entrustment of property or money or with any dominion over property, which is dishonestly misappropriated or dishonestly used or disposed in violation of any direction prescribed by law or the mode in which such trust was to be discharged or in the context any contract etc**., however the promise to sell the property for which consideration/money is paid or an agreement to sell is entered upon and the money has been paid pursuant to such an agreement, it shall not the same as entrustment of property within the concept of noted provision.** In case of entrustment, the money/property received is to be retained for return to the giver at a later time as opposed to a promise or contract where investment is made or money is paid for the purposes of fulfillment of a specific agreed upon purpose/contract. **In such a case where money/property has been entrusted to a person, using such amount/property for any other purpose would not attract the penal consequences of section 405 ibid.** For the purposes of above view, we draw support from the judgment of this Court reported as Shahid Imran v. The State and another (2011 SCMR 1614) ....*

In the case of a sale, the ownership of the concerned property does not remain with the person giving the property, but rather, it stands transferred to the recipient. Consequently, the concerned property is not to be returned to the owner so there is no concept of entrustment or trust (amanat), as required for criminal breach of trust, in a transaction of sale. Therefore, as there can be no entrustment between a seller and a purchaser, relations between a shop-keeper and customer, vendor and vendee, or seller and purchaser does not come within the ambit of criminal breach of trust as defined in section 405 P.P.C. Reference in this regard can be made to ***Zahid Jameel*** *(supra)***.**

10. As a necessary implication of the above discussion, it is also well recognized that mere failure to pay profits, or a breach of promise, agreement or contract in the absence of clear entrustment of property, do

not attract criminal breach of trust. Reliance in this regard can be placed on cases reported as ***Shahid Imran*** (supra), ***Lateef Ahmed v. The State and 3 others*** (2012 PCr.LJ 708 Lahore)**,** ***Muhammad Saifullah Cheema v. Umer Hayat and 2 others*** (2022 PCr.LJ 1327 Lahore)**,** ***Mumtaz Hussain v. The State and another*** (2020 PCr.LJ 1661 Lahore)**,** ***Khatija v. The State and another*** (PLJ 1973 Karachi 279), ***Ubedullah v. The State*** (2003 PCr.LJ 1921 Karachi), ***Haji Javed Iqbal v. The State*** (2004 YLR 2288 Lahore) and ***Iqrar Ahmed and another v. The State and another*** (1999 YLR 1117 Karachi).

11. There is also another important legal aspect of this case, namely, that bail was refused vide the impugned judgment, notwithstanding the fact that the offence of criminal breach of trust punishable under section 406 P.P.C does not fall within the prohibitory clause of section 497(1) Cr.P.C. This refusal becomes questionable when examined in light of the settled principle of law, namely, that in cases involving commission of non-bailable offences not falling within the prohibitory clause of 497(1) Cr.P.C, bail is granted as a rule and refusal is an exception. Disregard of this cardinal principle of bail jurisprudence warrants serious judicial introspection.

12. The principle that bail should be granted as a rule and withheld only in exceptional circumstances, particularly in cases involving non-bailable offences, not falling within the prohibitory clause of section 497(1) Cr.P.C., has been developed and applied in numerous judgements of this Court. In the case reported as ***Mansha Khan and 2 others v. The State*** (1977 SCMR 449), this Court granted bail to the appellants who had allegedly caused 16 injuries, three of which were grievous in nature, to the injured victim. The High Court had refused to grant bail to the appellants on the ground of the number of injuries suffered by the victim, however, this Court observed that the offence alleged was punishable with seven years rigorous imprisonment and did not fall under the prohibition contained in section 497 Cr.P.C. therefore, bail could not be withheld simply because the offence in question was non-bailable and heinous in nature. Likewise, in ***Allah Rakha and another v. The State*** (1993 SCMR 1994), this Court granted bail to petitioners who were charged with causing Shajjah-e-Mudihah on the sole ground that the said offence did not fall within prohibitory clause of section 497(1) Cr.P.C. This Court also granted bail in

the case reported as ***Muhammad Afsar v. The State*** (1994 SCMR 2051) which involved hurt caused as a result of firearm injury constituting an offence under section 337-F (ii) P.P.C. Bail was granted in this case as the offence did not fall under the prohibitory clause of section 497(1) Cr.P.C. This Court followed the same principle in ***Javaid Iqbal and Another v. The State*** (1995 SCMR 1090), where bail cancelled by the High Court was restored because the offence did not fall within the prohibitory clause of section 497(1) Cr.P.C. Although, the case involved multiple injuries, it was observed that section 337 P.P.C., under which the petitioners were charged, was punishable with three years' rigorous imprisonment and therefore did not attract the prohibition on bail.

13. This principle was authoritatively affirmed by this Court in a landmark judgment reported as ***Tariq Bashir v. The State*** (PLD 1995 SC 34). This Court analyzed the legal implications of the classification of non-bailable offences under Section 497(1) Cr.P.C. and was pleased to observe the following:

> *"6……. It is crystal clear that in bailable offences the grant of bail is a right and not favour, whereas in non-bailable offences the grant of bail is not a right but concession/grace.* ***Section 497, Cr.P.C. divided non-bailable offences into two categories i.e. (i) offences punishable with death, imprisonment of life or imprisonment for ten years; and (ii) offences punishable with imprisonment for less than ten years. The principle to be deduced from this provision of law is that in non-bailable offences falling in the second category (punishable with imprisonment for less than ten years) the grant of bail is 'a rule and refusal an exception.*** *So, the bail will be declined only in extraordinary and exceptional cases, for example-*
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> *(a) where there is likelihood of abscondence of the accused;*
> *(b) where there is apprehension of the accused tampering with the prosecution evidence;*
> *(c) where there is danger of the offence being repeated if the accused is released on bail; and*
> *(d) where the accused is a previous convict.*

Section 497 Cr.P.C. bifurcates non-bailable offences into two distinct categories: those that fall within the prohibitory clause and those that do

not. As per the dictum of the ***Tariq Bashir*** case (supra), in the latter category of cases, the grant of bail is a rule, whereas refusal is an exception. Such refusal can only be justified in extraordinary and exceptional circumstances, such as where the accused is likely to abscond, tamper with the prosecution evidence, repeat the offence, or is a previous convict. Since the decision in ***Tariq Bashir*** (supra), this Court has consistently reaffirmed the principles established therein through a series of subsequent judgments. Reference in this regard can be made to cases reported as ***Subhan Khan v. The State*** (2002 SCMR 1797), ***Zafar Iqbal v. Muhammad Anwar*** (2009 SCMR 1488), ***Muhammad Tanveer v. The State and Another*** (PLD 2017 SC 733), ***Arsalan Masih v. State*** (2019 SCMR 1152), ***Muhammad Ramzan v. State*** (2020 SCMR 717), ***Dr. Abdur Rauf v. The State*** (2020 SCMR 1258), ***Muhammad Nasir Shafique v. The State*** (2021 SCMR 2092), ***Iftikhar Ahmad v. The State*** (PLD 2021 SC 799), ***Muhammad Daniyal Farrukh Ansari v. The State*** (2021 SCMR 557), ***Ahmad Khalid Butt v. State*** (2021 SCMR 1016), ***Abdul Saboor v. State*** (2022 SCMR 592), ***Nazir Ahmad v. State*** (2022 SCMR 1467), ***Hilal Khattak v. The State*** (2023 SCMR 1182), ***Muhammad Nawaz v. State*** (2023 SCMR 734), ***Munawar Bibi v. The State*** (2023 SCMR 1729), ***Muhammad Aziz v. State*** (2023 SCMR 1773), ***Zafar Nawaz v. State*** (2023 SCMR 1997), ***Noman Khaliq v. State*** (2023 SCMR 2122) and ***Ali Anwar Paracha v. The State*** (2024 SCMR 1596).

14. Additionally, in order to give effect to foundational principles of criminal jurisprudence regarding bails, namely that bail cannot be withheld as punishment and basic law is bail not jail, it is necessary that the exceptional circumstances for refusing bail as enumerated in ***Tariq Bashir*** case (supra) be interpreted reasonably and judicially. Their scope must not be widened unnecessarily in order to withhold bail where a clear case of bail is made out, as was done in the case before us. The exceptions must be interpreted in a manner to give effect to the spirit of section 497(1) Cr.P.C, as elucidated in the ***Tariq Bashir*** case (supra), which envisions that bail be granted as a rule in cases where the alleged offence does not fall within the prohibitory clause of the said section. For instance, bail should not be withheld simply on the basis of an unsubstantiated apprehension that the concerned accused will abscond, unless such apprehension is based on some solid material available on the record, such as past behavior of accused. Even otherwise, where Courts may mitigate

such apprehensions by passing appropriate orders, they must do the same rather than simply denying bail to the accused. In case of apprehension of abscondence, the presence of the accused can be ensured by ordering him to submit substantial amount of securities/bail bonds. Similarly, bail should not be withheld solely on the ground that the accused is nominated in other similar FIR's. It is only a previous conviction—duly established through adjudication by trial— and not mere registration of other criminal cases, that can furnish a valid ground for denial of bail. This legal position has been consistently upheld in various judgments of this Court. Reference in this respect can be made to cases reported as ***Moundar and Others v. The State*** (PLD 1990 SC 934), ***Muhammad Rafique*** (1997 SCMR 412), ***Arsalan Masih v. State*** (2019 SCMR 1152), ***Babar Hussain v. State*** (2020 SCMR 871), ***Syeda Sumera Andaleeb v. The State*** (2021 SCMR 1227), ***Nazir Ahmad v. State*** (2022 SCMR 1467) and ***Ali Anwar Paracha v. The State*** (2024 SCMR 1596). It is a foundational principle of criminal law that every person is innocent until proven guilty. Refusal of bail simply because the accused is nominated in another similar FIR would be tantamount to inflicting punishment before trial, thereby undermining the presumption of innocence. Likewise, discretion to refuse bail on the apprehension that the accused may tamper with evidence should be exercised with caution. Section 173 Cr.P.C. clearly stipulates that the police report (challan) must be completed within 14 days, which means that the investigation and collection of evidence should be finalized within this time frame, so the window for any potential tampering is inherently narrow. Consequently, scope of refusing bail on this ground is limited and can only be exercised when there is some substantial material on record indicating a real and imminent risk of tampering. In the case reported as ***Serajul Haq v. The State*** (1968 SCMR 251), this Court set aside an order in which bail was refused to the accused on the ground that there was an apprehension of tampering with evidence but no substantial basis for this concern was provided in the impugned order. This Court, therefore, held that the apprehension of tampering was speculative and unfounded, and, as such, the refusal to grant bail was not sustainable. The same principles apply regarding the apprehension of repetition of offence, namely, that bail can only be refused on such ground if the apprehension is grounded on cogent reasons and material available on record. Reliance in this regard can be placed on ***Muhammad Tanveer*** (supra). Such interpretation finds support from trite law namely, that discretion in bail matters should be

exercised on the basis of sound judicial considerations, in conformity with statutory parameters, as affirmed in ***Muhammad Aurangzeb v. Karim Khan and Others*** (2022 SCMR 849).

15. Coming to the instant case, the contents of the FIR clearly state that all the vehicles in question were given by the complainant to the petitioner in pursuance of successive business transactions. The complainant not only settled the price of the vehicles with the petitioner but also received partial payments in lieu of the said transactions. In this eventuality and in light of the above discussed law, it is quite clear that there was no entrustment of the vehicles as trust (amanat) to the petitioner by the complainant. In absence of any such entrustment, offence under section 405 P.P.C, is not made out and resultantly, section 406 P.P.C is not applicable in the present case. The contention of the learned counsel of the complainant that the FIR explicitly stated the vehicles were given as a trust (amanat) is of no avail because as per the dictum of ***Miraj Khan v. Gul Ahmed*** (2000 SCMR 122), mere mentioning the word 'trust' in an FIR does not per se establish criminal breach of trust, and the said offence can only be made out when the requisite elements of the offence stand fulfilled. Similarly, in ***Imtiaz Ali v. Bismillah Khan and Another*** (1974 PCrLJN 22 Karachi)**,** it was held that mere mention of word 'amanat' cannot change a transaction like business loan into a trust. Therefore, the mere use of expressions such as "trust" or "amanat" within the context of business transactions does not, by itself, amount to an act of entrustment so as to attract the offence of criminal breach of trust. The offence can only be said to be made out when both of its essential elements are clearly present and established. Additionally, the offence under section 406 P.P.C does not fall within the prohibitory clause of section 497(1), and the above discussed law clearly stipulates that grant of bail in such cases is a rule and refusal an exception. The case of the petitioner does not fall in any of the exceptions mentioned in ***Tariq Bashir*** (supra). The view taken by the Learned High Court in the impugned judgment that the petitioner cannot be granted bail because he is nominated in three other FIRs is misplaced, because as discussed above, only previous conviction can furnish a ground for refusal of bail.

16. We have also observed that none of the vehicles in question here, have been recovered from the petitioner and that the complainant lodged

the FIR after a considerable delay of 5 months, without any explanation. Due to above reasons, case of petitioner also calls for further inquiry, falling under sub-section (2) of section 497 Cr.P.C. The petitioner is also entitled for bail after-arrest on this ground.

17. Before parting with this judgment, we deem it necessary to record our deep concern over two unfortunate matters that have come to our notice in the proceedings of this case, Firstly, we have noticed that there is a disturbing pattern of misconstruction and misapplication of section 405 P.P.C. The offence of criminal breach of trust is increasingly being invoked in circumstances that are purely civil in nature, such as, business disputes. Instead of resorting to appropriate civil remedies, litigants seek to initiate criminal proceedings merely to expedite the recovery of lost money or to exert undue pressure on the opposing party. This practice is wholly against the established scheme of criminal and civil law. Matters that are inherently civil in nature, such as those involving contractual disputes or monetary claims cannot be misinterpreted or deliberately converted into criminal cases for the purpose of gaining revenge, coercing settlements, or recovering financial losses. Such abuse of criminal law not only undermines the sanctity of civil remedies but also clogs the criminal justice system by diverting precious judicial resources, and exposing individuals to unwarranted criminal proceedings, which often culminate in grave miscarriages of justice. It is the duty of Courts to remain vigilant to prevent any misuse or misapplication of law. While dealing with cases of criminal breach of trust, Courts must carefully scrutinize the case to determine if the two requisite elements of the offence are fulfilled, and where such elements are not present, Courts must judicially and liberally exercise their discretion in grant of bail. This, however, does not imply that courts should indiscriminately grant bail in every matter where a civil element is apparent. Rather, it underscores the obligation of courts to carefully examine whether the statutory ingredients of the alleged offence are duly satisfied and established on the record before allowing the criminal process to proceed. This duty assumes greater significance at the bail stage, as the fundamental right of liberty of citizens is directly under question at that stage. It would be a grave miscarriage of justice to confine a person to jail for an offence that is not prima facie made out in the first place. It is imperative that this duty is to be discharged at the very first forum of bail, namely, by magisterial courts.

18. This brings us to the second matter, which is one of even greater importance. We have observed with extreme disappointment that courts of first instance repeatedly fail to adhere to and apply the clear principles established by this Court in the ***Tariq Bashir*** case (supra). This blatant disregard of judicial precedent is not only highly prejudicial for hierarchical structure of judicial authority, but is also contrary to the Constitution of the Islamic Republic of Pakistan, 1973. Where this court deliberately and with the intention of settling the law, pronounces upon a question, then such pronouncement is law within the meaning of Article 189 of the Constitution, which stipulates that precedent established by this Court is binding upon all subordinate courts. Therefore, the law pronounced therein cannot be treated as mere obiter dictum. For elaboration, reference in this regard can be made to cases reported as ***Justice Khurshid Anwar Bhinder v. Federation of Pakistan*** (PLD 2010 SC 483) and ***Allied Bank Limited v. Habib-ur-Rehman*** (2023 SCMR 1232). Exercise of discretion by subordinate courts regarding the application of binding precedent is completely impermissible and amounts to a grave dereliction of judicial duty. The disregard of binding precedent in matters of bail, especially where liberty is at stake, is wholly unacceptable and borders on judicial indiscipline. Lower courts are not at liberty to pick and choose which judgments of the Supreme Court to follow. As such, courts of first instance are bound to apply the principles laid down in the ***Tariq Bashir*** case (supra) while deciding bail applications in cases of offences that do not fall within the prohibitory clause of Section 497(1) Cr.P.C., and in such cases, bail must be granted as a rule and refused only in exceptional circumstances. In view of the principles of law enunciated above and the directions issued herein, we consider it appropriate to direct the Office to send a copy of this judgment to the Registrars of all the High Courts who must circulate this among all District Courts across the country for their information and necessary guidance, together with a solemn reminder that its implementation is not optional but mandatory under the law and the constitution.

19. Foregoing are the reasons for our short order dated 18.02.2025 which is reproduced hereunder:

> *“For the reason to be recorded later, this petition is converted into an appeal and allowed. The petitioner is enlarged on bail in case FIR No.207 dated 28.02.2022 registered under section 406 of the Pakistan Penal Code (PPC)*

at Police Station Cantt District Gujranwala subject to furnishing his bail bonds in the sum of Rs. 5,00,000/- (Five Hundred thousand) with two sureties in the like amount to the satisfaction of the trial Court, concerned."

At the end, we would like to appreciate the research work done by the Law Clerks, mentioned above.

Judge

Judge

Islamabad
19.05.2025
*Zameer Hussain/***

APPROVED FOR REPORTING.