ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Miscellaneous No.356 of 2025

CHAUDHRY NADEEM AMIR
Versus
THE STATE AND ANOTHER

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	07.03.2025.	**Mirza Irfan Ghazanfar, Advocate for the petitioner.** **Rana Ali Raza, State Counsel.** **Petitioner on ad-interim bail.** **Akhtar Abbas, ASI, P.S Koral, Islamabad with record.** Through the instant petition, the petitioner seeks pre-arrest bail in case FIR No.82, dated 12.01.2022, u/s 420, 170, PPC, registered at Police Station Koral, Islamabad. 2. Brief facts as per the FIR are that respondent No.2/complainant moved an application to the police alleging therein that he is in real estate business for the last 15 years and his office with the name of Syban Property is situated on butcher street Taramri Chowk, Islamabad. Muhammad Nadeem Amir (present petitioner) came in his office and asked for selling of 5 Marla commercial plot situated in Jagiot Road in front of Darbar Mouza Farash, Tehsil & District Islamabad and told that his brother is owner of the said plot and possession of the said plot is also with him and that he will be

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bound to give the registry and possession of the said plot after taking the same from the owner. The petitioner impersonated himself as an employee of CIA. On 17.11.2021 the petitioner executed a stamp paper with respondent No. 2 in the office in the presence of Haji Muhammad Mazhar Hussain and Zafar Iqbal and received a cheque No.00099760 amounting to Rs.700,000/-, which he presented in Askari Bank Lehthrar Road on 18.11.2021 and got encashed but did not hand over possession of the said plot. That on meeting with owner of the plot, respondent No 2 came to know that the petitioner without the consent of the owner received the earnest money and fled away.

3. Learned counsel for the petitioner contended that the petitioner is innocent and has falsely been implicated in this case; that there is no direct or indirect evidence against the petitioner; that there is no likelihood of the petitioner's abscondance or tampering with the prosecution evidence

4. Learned State Counsel contended that although the alleged offences are bailable, however, the petitioner is not entitled for discretionary relief of pre-arrest bail as he did not appear before the

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Court of learned Additional Sessions Judge after obtaining ad-interim pre-arrest bail.

5. I have heard the arguments and perused the record.

6. Perusal of the record reveals that the petitioner filed his first pre-arrest bail petition before the Court of learned Additional Sessions Judge on 01.08.2024, which was dismissed for non-prosecution on 22.08.2024. On the same day the petitioner filed second pre-arrest bail petition, stating therein that due to traffic jam caused by the Jalsa of PTI, he was unable to appear before the Court in time, which was also dismissed for non-prosecution on 25.09.2024. Thereafter the petitioner filed third pre-arrest bail petition on 21.01.2025, which was dismissed on 17.02.2025 for the reason that the petitioner has failed to provide a plausible justification for his non-appearance on 22.08.2024.

7. The learned Additional Sessions Judge dismissed the third pre-arrest bail petition of the petitioner and erroneously relied upon order of this Court passed in Crl. Misc. No. 1367-B/2021 (Mohsin Ayub vs. The State), which involved a non-bailable offence and is therefore distinguishable from the present case.

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8. Section 496, Cr.P.C deals with bailable offences and mandates that when an accused person is either produced before the competent Court or voluntarily surrenders, the Court is legally bound to grant bail. In cases of bailable offences, the Court has no discretion to refuse bail, as its grant is a statutory right of the accused.

9. Section 497 Cr.P.C governs non-bailable offences, wherein the Court exercises judicial discretion in deciding whether to grant or refuse bail, considering the facts and circumstances of each case and the nature of the offence.

10. Section 498 Cr.P.C provides the jurisdiction of the High Court and the Court of Sessions to grant pre-arrest bail in both bailable and non-bailable offences. However, where a petition for pre-arrest bail under Section 498 Cr.P.C in respect of a bailable offence is presented, the Court has no discretion except to grant bail as it is the absolute right of an accused. The Court lacks any authority or discretion to refuse bail in bailable offence, as such refusal would constitute a violation of the statutory entitlement conferred upon an accused by law. Reliance is placed on ***Alam Zeb vs. The State*****,**

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(PLD 2014 SC 760) and ***Mumtaz alias Bhutto vs. The State*, (2021 P Cr. L J 1300)**.

11. Furthermore, it is a well-established principle of law that procedural technicalities should not be used to defeat the rights of an accused. The record indicates that the petitioner had a genuine reason for his non-appearance, which was not properly appreciated by the learned Additional Sessions Judge.

12. In light of the foregoing discussion, it is evident that the refusal of bail to the petitioner in a case involving bailable offences is not sustainable under the law. The learned Additional Sessions Judge exercised his discretion arbitrarily against the settled legal principles, thereby causing miscarriage of justice. Accordingly, this petition is **allowed**, ad-interim pre-arrest bail granted to the petitioner vide order dated 21.02.2025 is **confirmed**, subject to the furnishing bail bonds in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of the learned Trial Court.

(INAAM AMEEN MINHAS)
JUDGE

APPROVED FOR REPORTING

R.Anjam.

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