ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Misc. No. 1219-B/2026

Asad Nadeem Kiani

Versus

The State & another.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	09.09.2026	Malik Nasir Abbas, Advocate for the petitioner. Khawaja Shahid Rasool, Advocate for respondent No.2. Mr. Muhammad Ahsan Fiaz, SPP. Mr. Muhammad Sadiq, S.I/I.O, P.S Margalla Islamabad.

Through the instant petition, the petitioner, Asad Nadeem Kiyani, seeks post-arrest bail in case FIR No.09/2014 dated 02.01.2014, registered under section 406 of the Pakistan Penal Code, 1860 **("PPC")**, at Police Station Margalla, Islamabad. His applications for post-arrest bail were earlier dismissed by the learned Judicial Magistrate, Islamabad-West, on 01.07.2026 and by the learned Additional Sessions Judge, Islamabad-West, on 21.07.2026.

2. According to the FIR, the complainant, Humayun Ashraf Awan, entered into an agreement dated 19.09.2005 with the petitioner for the purchase of land measuring 45 kanals, situated in Khasra Nos. 1, 2, 3 and 4, Mouza Kot Hathial, Bhara Kahu, Islamabad, at the rate of Rs.195,000/- per kanal. The petitioner also undertook to provide access to the main road. It is alleged that, despite receiving the sale consideration, the petitioner failed to transfer the agreed land and provide the stipulated access. On the application of the complainant, the FIR was registered.

3. The petitioner's first application for post-arrest bail was dismissed by the learned Judicial Magistrate on 24.08.2015. Thereafter, vide order dated 29.08.2015, the learned Additional Sessions Judge admitted the petitioner to bail, tentatively observing that the FIR did not disclose entrustment

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or dishonest misappropriation and that the allegation pertained to non-fulfilment of a contractual obligation. The report under section 173 Cr.P.C. was subsequently submitted and charge framed on 02.12.2015. As recorded in the order dated 21.07.2026, the petitioner absented himself from the trial proceedings on 09.05.2019 and was declared a proclaimed offender on 02.12.2019, whereupon his bail was cancelled.

4. Upon his re-arrest, the petitioner's application for post-arrest bail was dismissed by the learned Judicial Magistrate vide order dated 01.07.2026, on the grounds that there was no previous enmity between the parties, that the offence was one "against society", and that the petitioner had remained a proclaimed offender. His subsequent application for bail before the learned Additional Sessions Judge, Islamabad-West, was likewise dismissed vide order dated 21.07.2026, given his continued status as proclaimed offender since 02.12.2019 and given the apprehension that he would again misuse the concession of bail. Neither of the impugned orders records any independent, even tentative, finding regarding the ingredients of section 406 PPC or the merits of the allegations contained in the FIR; both proceed primarily on the petitioner's previous abscondence and his status as a proclaimed offender.

5. Learned counsel for the petitioner contends that the essential ingredients of section 406 PPC i.e., entrustment of property and its subsequent dishonest misappropriation or conversion, are conspicuously absent from the FIR; that, at its core, the dispute is civil in nature and concerns the performance of an agreement for the sale of land and provision of access thereto; that this very finding was recorded by the learned Additional Sessions Judge as far back as 29.08.2015 on the same record and has never been reversed or disturbed on merits by any superior forum; that the co-accused already stands discharged; that cancellation of the petitioner's earlier bail in 2019 was occasioned by his absence and did not involve any reassessment of the merits of the case; that the status of a proclaimed offender, though a relevant consideration, does not constitute an absolute or

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automatic bar to the grant of bail and must be weighed alongside the nature of the offence and the quality of the available evidence; and that any apprehension regarding the petitioner's future attendance may adequately be addressed by imposing stringent conditions rather than subjecting him to indefinite pre-trial detention. Learned counsel further submits that the FIR is more than twelve years old and the trial has yet to conclude. Reliance is placed on *Muhammad Amjad Naeem v. The State (2025 SCMR 1130), Mazhar Ali v. The State (2025 SCMR 318), Zeeshan v. The State (2024 SCMR 1716) and Noman Khaliq v. The State (2023 SCMR 2022).*

6. The learned SPP for the State and learned counsel for the complainant have opposed the petition and supported the impugned orders. They contend that the petitioner remained a proclaimed offender for a prolonged period, disregarded the process of the trial Court and that there is exist a genuine apprehension that, if released on bail, he would again abscond and impede the conclusion of the trial.

7. The record has been examined and the arguments addressed by learned counsel for the parties have been considered. At this stage, the Court is required to undertake a tentative assessment of the prosecution material to determine whether reasonable grounds exist for believing that the petitioner has committed the alleged offence or whether his guilt calls for further inquiry. His nomination in the FIR and the receipt of money, without examining the nature and purpose of such receipt, do not, by themselves, establish that the offence of criminal breach of trust is prima facie made out.

8. Section 405 PPC requires entrustment of property, or dominion over property in the nature of entrustment, followed by its dishonest misappropriation, conversion, use or disposal as contemplated by that provision. Section 406 PPC prescribes the punishment for the said offence. Money received as the price of land under an agreement to sell does not, merely by reason of subsequent non-performance of the agreement, assume the character of entrusted property. The reference in section 405 PPC to a legal contract relates to the discharge of

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a trust and neither dispenses with the requirement of entrustment nor extends the offence to every breach of contract.

9. Upon a tentative reading of the FIR, the money was paid to the petitioner in his capacity as seller towards the purchase price of the land. The allegations pertain to his failure to transfer the agreed property and provide access thereto. No distinct arrangement under which the petitioner was required to hold the money in trust for the complainant is apparent from the contents of the FIR. The order dated 24.08.2015 also records that part of the land had been transferred, which further indicates that the dispute pertains to the performance of the underlying transaction; however, the extent and legal effect of any such transfer are matters to be determined by the learned trial Court. The mere availability of a civil remedy does not exclude criminal proceedings where the ingredients of a criminal offence are otherwise disclosed. In the present case, it is the apparent absence of the essential ingredient of entrustment that brings the petitioner's guilt within the ambit of further inquiry under section 497(2) Cr.P.C. This assessment has been made independently and is consistent with the tentative view expressed in the order dated 29.08.2015 by the learned Additional Sessions Judge.

10. The offence under section 406 PPC carries a maximum punishment of seven years' imprisonment and, therefore, does not fall within the prohibitory clause of section 497(1) Cr.P.C. In *Tariq Bashir and others v. The State* (PLD 1995 SC 34), the Hon'ble Supreme Court held that the grant of bail in offences falling outside the prohibitory clause is the rule and its refusal an exception. Nevertheless, as explained in *Muhammad Imran v. The State* (PLD 2021 SC 903), the likelihood of an accused absconding to avoid trial constitutes a recognized ground for departure from that rule. The petitioner's previous conduct, therefore, cannot be disregarded merely because the alleged offence falls outside the prohibitory clause.

11. The petitioner remained absent from the trial for several years after obtaining bail, and the earlier order of the

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learned Judicial Magistrate also refers to such abscondence. His challenge to the proclamation proceedings did not absolve him of his obligation to submit to the process of law. The apprehension expressed by the learned Additional Sessions Judge is, therefore, founded on the petitioner's previous conduct. The plea that a change of residence resulted in the non-receipt of summons does not satisfactorily explain his prolonged absence, particularly after the charge had been framed.

12. However, the petitioner's previous conduct does not cure the deficiency concerning the essential ingredient of entrustment. In *Ikramul Haq v. Raja Naveed Sabir and others (2012 SCMR 1273),* the Hon'ble Supreme Court held that where the guilt of an accused calls for further inquiry, entitlement to bail under section 497(2) Cr.P.C. prevails over considerations of propriety arising from abscondence. The present case additionally involves the misuse of an earlier concession of bail, which must be addressed by imposing stringent conditions to secure the petitioner's attendance. Having weighed the petitioner's previous conduct against the substantial question concerning an essential ingredient of the alleged offence, this Court considers it appropriate to admit him to bail subject to materially strengthened safeguards. The investigation has already culminated in the submission of the challan and the case is presently pending trial. The petitioner's attendance can be secured through verified sureties, disclosure of his current and permanent residential addresses, and regular personal attendance before the learned trial Court. It is clarified that the present relief is founded upon the ground of further inquiry; neither the age of the FIR nor the delay attributable to the petitioner is being treated as a ground for the grant of bail.

13. Consequently, the instant petition is **allowed**, and the petitioner is admitted to post-arrest bail subject to furnishing bail bonds in the sum of Rs.200,000/- (rupees two hundred thousand only) with two sureties, each in the like amount, to the satisfaction of the learned trial Court. Before accepting the bonds, the learned trial Court shall verify the identities,

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addresses and financial capacity of the sureties. Fresh bonds shall be furnished under section 499 Cr.P.C., and the earlier bail bonds shall not stand revived.

14. The petitioner shall furnish his current and permanent residential addresses and CNIC particulars to the learned trial Court, along with an undertaking to promptly notify the Court, in writing, of any change therein. He shall appear before the learned trial Court on every date of hearing unless expressly exempted. The sureties shall execute bonds securing his continued attendance and shall be apprised of their liability in the event of any breach thereof.

15. Any unexplained absence or further attempt to evade the proceedings shall be dealt with promptly by the learned trial Court through appropriate coercive measures in accordance with law. The State or the complainant shall also be at liberty to seek cancellation of bail in the event of misuse of the concession granted through this order. Any proceedings arising out of the forfeiture of the previous bail bonds shall be dealt with independently in accordance with law.

16. The learned trial Court is expected to proceed with the trial expeditiously and endeavour to conclude the same within two months from the date of receipt of this order.

17. It bears nothing that the findings and observations recorded herein are tentative and confined to disposal of the present bail petition. They shall not prejudice the trial, which shall be decided independently on the basis of the evidence brought on record.

(AYYAZ SHAUKAT)
JUDGE

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