

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Justice Muhammad Hashim Khan Kakar
Justice Ishtiaq Ibrahim

Criminal Petition No. 894/2026

*(Against the order/judgment dated 11.05.2026
passed by the Peshawar High Court, Mingora Bench,
(Dar-ul-Qaza), Swat in Crl. B.A No. 261-M/2026)*

Jalat Khan	Petitioner(s)
Versus	
The State thr. A.G. KPK and another	Respondent(s)

For the Petitioner(s):	Mr. Jalal ud Din, ASC (thr. V/L, Peshawar) a/w Ms. Tasleem Bibi, wife of petitioner
For the State:	Mr. Bashar Naveed, AAG KPK
Date of Hearing:	03.08.2026

JUDGMENT

Muhammad Hashim Khan Kakar, J. By way of this petition, the petitioner seeks his post arrest bail in case FIR No.7/2026, registered at Police Station Nawagai, District Bajaur for an offence under section 14 of the Foreigners Act, 1946 (**the Act of 1946**), which was declined by Peshawar High Court vide impugned order dated 11.05.2026.

2. Brief facts of the prosecution case, as disclosed in the FIR, are that the petitioner, a foreign national, was found residing within the jurisdiction of the local police station without a valid Visa/residence permit and was accordingly proceeded against under section 14 of the Act of 1946.

3. Learned counsel for the petitioner submitted that the petitioner is a foreign national who has contracted a valid marriage, solemnized through a registered Nikah Nama on 01.05.1994, with a Pakistani woman, namely, Tasleem Bibi, a citizen of Pakistan by birth and also

blessed with children as well from the said wedlock. He further submitted that upon the strength of the said marriage, the petitioner had applied for Pakistan Origin Card (POC) and also filed a constitutional petition before the Peshawar High Court, Peshawar for the said purpose and continues to be entitled to apply for a certificate of the domicile and national identity card for overseas/resident Pakistanis or in the alternative for registration as a citizen of Pakistan in terms of section 10 of the Pakistan Citizenship Act, 1951 (**the Act of 1951**). He further contended that his continued presence in Pakistan till decision of the fate of his status by the Federal Government cannot, without more, be treated as an offence attracting penal consequences under the Act of 1946.

4. On the contrary, learned AAG for the State, assisted by the Investigating Officer, has opposed the bail petition by contending that the petitioner is admittedly a foreign national who did not possess a valid visa/permit authorizing his stay for the relevant period; that marriage to a Pakistani woman does not *ipso facto* confers citizenship or exempt a foreign national from the regulatory regime of the Act of 1946 and that the offence under section 14 of the Act of 1946 is a continuing one so long as the petitioner remains in Pakistan without lawful authority.

5. We have heard the learned counsel for the petitioner as well as learned AAG for the State and perused the available material. The record shows that the High Court has dismissed the application for grant of post arrest bail mainly on the strength of section 14A of the Act of 1946.

6. To address the issue in hand, we must look into the scheme of the Act of 1946 as far as penalties and bail are concerned. The Act of 1946 categorizes penal contraventions under section 14 into two distinct species:

- i. **Sub-section (1) of Section 14:** Applies to a person who contravenes any provision of the Act, order, or direction issued thereunder (e.g., remaining in Pakistan after expiry or cancellation of permission/stay document). The statutory sentence extends to three years.

ii. **Sub-section (2) of Section 14:** Applies strictly to a person who “*knowingly enters into Pakistan illegally*”. The statutory sentence extends up to ten years.

Section 14A of the Act of 1946, which places embargo on grant of bail, reads as follows:

“14A. Restriction on release on bail. Notwithstanding anything contained in the Code of Criminal Procedure, 1898... any person accused of an offence punishable under sub-section (2) of section 14 shall not be released on bail if there appear reasonable grounds for believing that he has been guilty of such an offence.”
(*underlined for emphasis*)

Keeping in view the above provisions, it is necessary to make a distinction between the cases where the allegation or the facts are such that the accused remained in Pakistan after expiry or cancellation of permission/stay document after entering in Pakistan lawfully and the cases where the allegation or facts are such that accused knowingly entered into Pakistan illegally in the first instance. In the former situation, section 14(1) of the Act of 1946 is attracted and the case does not fall within sub-section (2) thereof. It necessarily follows that the embargo contained in section 14A, which is specifically tied to an accusation punishable under section 14(2), is not attracted. In the latter situation, section 14(2) of the Act of 1946 is attracted and the embargo contained in section 14A necessarily applies.

In the instant case, the FIR does not contain any allegation that the petitioner knowingly entered into Pakistan illegally. The case built against him rests entirely upon his continued presence following administrative changes regarding PoR cards and executive notifications. Tentatively, therefore, the accusation falls under section 14(1), not section 14(2). Consequently, the statutory bar on bail under section 14A is inapplicable. Because the maximum sentence under section 14(1) is three years, the offence falls outside the prohibitory clause of section 497 Cr.P.C., where grant of bail is the rule and refusal an exception.

7. At this stage, we would also like to address a critical dimension of the cases concerning foreign husbands of female Pakistani citizens and the scheme of the Act of 1951 qua citizenship which requires urgent resolution in the statutory regime. Section 10 of the Act of 1951

historically provided a statutory path to citizenship for foreign women marrying male Pakistani citizens, but lacked a reciprocal provision for foreign men marrying female Pakistani citizens. This gender-based disparity was addressed by the Federal Shariat Court in a *suo moto* case¹, whereby it was held that section 10 of the Act of 1951 is discriminatory, negates gender equality and is in violation of Articles 2A and 25 of the Constitution of the Islamic Republic of Pakistan and also against international commitments of Pakistan and most importantly is repugnant to Holy Qur'an and Sunnah. However, Civil Shariat Appeal No.1 of 2008 has been filed against the said judgment before this Court (Shariat Appellate Bench) which is pending adjudication. In the context of the said judgment of Federal Shariat Court, the High Courts have been consistently discussing the legal repercussions and issuing directions for consideration of cases of such foreign husbands of Pakistani women for issuance of POC.² In the instant case, the record reflects that the petitioner is a foreign husband married to Mst. Tasleem Bibi, a born Pakistani citizen, via a registered Nikah Nama. The Peshawar High Court had already taken cognizance of this situation in W.P. No. 4342-P/2024 (Mst. Tasleem Bibi v. Federation of Pakistan), issuing directions on 20.09.2024 for the Federal Government and NADRA regarding process of the petitioner's POC application. Furthermore, in W.P. No. 4341-P/2024, directions were issued regarding the citizenship status of their children under the Act of 1951. Ignoring these judicial directions and penalizing a foreign husband while his application for determination of his status remains pending before administrative bodies converts executive processing delays into punitive incarceration.

8. Besides, where complex questions of law and fact remain open regarding an individual's status and ongoing administrative processes, the case falls within the ambit of further inquiry under section 497(2) Cr.P.C. The material brought on record i.e., marriage of petitioner with Pakistani female in 1994, existence of children from the said wedlock and directions issued by High Court qua determination of his status and

¹ *Suo Moto Case No. 1/K of 2006* (reported as *PLD 2008 FSC 1*)

² *Masooma v. Federation of Pakistan* (PLD 2024 Balochistan 33), *Mst. Rukhsana Bibi v. Government of Pakistan* (PLD 2016 Lahore 857) and *Mst. Amna v. Federation of Pakistan* (PLD 2024 Peshawar 57).

issuance of POC, are the circumstances which are undeniably relevant for the purpose of bail and pre-trial detention under such circumstances serves no legitimate purpose.

9. For the foregoing reasons, whilst setting aside the impugned order, this petition is converted into an appeal and allowed. The petitioner is admitted to post arrest bail subject to his furnishing bail bonds in the sum of Rs.20,000/- (Rupees twenty thousand) with two sureties in the like amount to the satisfaction of the Trial Court. Needless to observe, the observations made herein are tentative in nature, confined to the disposal of the instant bail petition, and shall not prejudice either party at the trial or before any administrative/civil forum seized of the petitioner's citizenship, domicile or CNIC application, where the matter shall be decided strictly on its own merits, uninfluenced by anything said herein.

Judge

Judge

ISLAMABAD
03.08.2026
(Aqib Aman RO)

Approved for Reporting