Judgment Summary

Hammad Ali and others v. The State and another

Court	Lahore High Court, Multan Bench (Single Judge)
Judge	Tariq Saleem Sheikh, J
Case	Crl. Misc. No. 1974-B/2026 (pre-arrest bail)
Order	30 April 2026
FIR	No. 90/2025 dated 25.04.2025, PS FIA CCRC, Multan
Offences	Sections 419, 420, 468 & 471 PPC; sections 13 & 14, PECA 2016
Subject	Legal and regulatory status of virtual assets in Pakistan; whether P2P receipts disclose cheating, forgery, electronic fraud or a FERA contravention

1. Facts

The complainant, Muhammad Farhan, lodged a complaint with the Federal Investigation Agency (FIA), Cyber Crime Reporting Centre (CCRC), Multan. He stated that about three years earlier an acquaintance had introduced him to a cryptocurrency trading application and encouraged him to invest in digital assets. He initially invested Rs. 5,000,000, which he described as equivalent to 25,000 USDT (Tether). The market then fell, depleting his account balance. Expecting a recovery, he invested a further 25,000 USDT, and after a second crash a further 30,000 USDT. This cycle of losses and reinvestment continued until he had invested an aggregate of 270,000 USDT, generated by liquidating his movable and immovable assets including his residence, gold ornaments, vehicles and business assets. The trading company then froze his account and he could no longer access the digital assets.

The complainant acquired USDT through multiple peer-to-peer (P2P) merchants operating on an online cryptocurrency application. He paid by transferring Pakistani rupees from his bank accounts to bank accounts held by those merchants; on receipt of payment the merchants transferred the corresponding USDT into his trading account. The complaint was registered as Enquiry No. 183/24.

During the enquiry the FIA found that the complainant had conducted 351 transactions through 237 bank accounts and had transferred an aggregate of Rs. 68,664,460 to various persons in exchange for USDT. USDT was transferred into two cryptocurrency accounts — one in the complainant's name and one in the name of his brother, the latter allegedly also operated by the complainant. Of 177 persons linked to the transactions, the complainant filed affidavits in favour of 72 and said he did not wish to proceed against them. FIR No. 90/2025 was then registered.

The attribution to the three petitioners was confined to specified bank receipts: Hammad Ali, Rs. 45,000; Asad Amjad, Rs. 49,000 and two amounts of Rs. 250,000 each; and Muhammad Athar, Rs. 499,500 and Rs. 31,611. The transactions in question related to the period 2021 to 2023. The petitioners, who had been granted ad-interim pre-arrest bail and had joined the investigation, sought confirmation of that bail.

2. Legal Issues

The Court framed the controversy as raising two questions, the first of which required it to address a number of subsidiary points:

- Issue I — Status of virtual assets: The legal and regulatory status of virtual assets in Pakistan at the relevant time, and in particular whether cryptocurrency is regarded as a "currency", "commodity" or "security" internationally and under Pakistani law.
- Issue I(a) — Effect of BPRD Circular No. 03 of 2018: Whether the State Bank's 2018 prohibition on dealing in virtual currencies/tokens criminalised private P2P virtual-asset transactions.
- Issue I(b) — Effect of the later framework: Whether the SBP clarification of 2025, the Virtual Assets Ordinance, 2025 and the Virtual Assets Act, 2026 bear on transactions predating them.
- Issue I(c) — FERA: Whether USDT is "currency", "foreign currency" or "foreign exchange" within sections 2(b), 2(c) and 2(d) of the Foreign Exchange Regulation Act, 1947, so as to attract sections 4 and 5 (and the penal consequences under section 23), even though FERA was not invoked in the FIR.
- Issue II — Prima facie case and necessity of arrest: Whether the evidence presently available prima facie connects the petitioners with the offences invoked in the FIR — sections 419, 420, 468 and 471 PPC and sections 13 and 14 of PECA — and whether their arrest is necessary for the purposes of investigation.

3. Litigation History

As an application for pre-arrest bail, the matter came before the Court at first instance; its procedural course was as follows:

- Enquiry No. 183/24 — complaint lodged by Muhammad Farhan with the FIA, CCRC, Multan, and enquiry conducted into the P2P transactions.
- FIR No. 90/2025 dated 25.04.2025 — registered at PS FIA, CCRC, Multan for offences under sections 419, 420, 468 and 471 PPC and sections 13 and 14 of PECA, following the enquiry findings.
- Ad-interim pre-arrest bail — granted to the petitioners, who joined the investigation; no misuse of the concession was alleged.
- Notices to the regulators — having regard to the questions involved, the Court issued notice to the Pakistan Virtual Assets Regulatory Authority (PVARA), the State Bank of Pakistan (SBP) and the Securities and Exchange Commission of Pakistan (SECP), directing them to assist on whether cryptocurrency is regarded as a currency, commodity or security internationally and under Pakistani law. All three filed written responses and appeared through representatives.
- Crl. Misc. No. 1974-B/2026 — heard and decided by order dated 30.04.2026, confirming the ad-interim pre-arrest bail.

4. What the Court Held

Tariq Saleem Sheikh, J allowed the application and confirmed the ad-interim pre-arrest bail. The principal holdings were:

- (i) USDT is properly characterised as a virtual asset — a digital representation of value used for payment or investment — rather than as fiat currency, legal tender, or a monetary instrument issued or guaranteed by any sovereign authority. The legal character of a virtual asset is not fixed or uniform; it depends on the function the asset performs and on the language, object and scheme of the statute under which classification arises.
- (ii) BPRD Circular No. 03 of 2018 did not create a penal offence against private individuals. Its addressees were regulated financial and payment-sector entities, not private persons transacting with each other; and describing virtual currencies/tokens as "not legal tender" did not make them illegal or contraband. The SBP clarification of 30.05.2025 reinforces this.
- (iii) The Virtual Assets Act, 2026 establishes a comprehensive regime and creates PVARA as licensing and supervisory body, but its relevance here is limited: it shows Pakistan's movement from the absence of a dedicated framework to a comprehensive one, and does not retrospectively determine criminal liability for transactions predating it.
- (iv) Cryptocurrency is not "currency", "foreign currency" or "foreign exchange" under FERA for present purposes. USDT does not naturally fall within the enumerated categories in section 2(b); it does not become foreign currency merely because it is traded internationally, nor foreign exchange merely because its value is pegged to a foreign currency.
- (v) FERA may nonetheless apply to a cryptocurrency-related transaction where the surrounding arrangement supplies the statutory nexus — a prohibited or regulated payment, conversion into or out of foreign currency, remittance to a person resident outside Pakistan, use of banking channels for foreign-exchange evasion, or any device to defeat the Act. Liability would then arise from the foreign-exchange component, not from the use of a virtual asset as such. No such nexus was shown here.
- (vi) None of the offences in the FIR was prima facie made out against the petitioners: no personation under section 419 PPC; no dishonest inducement at inception under section 420 PPC (which is in any event bailable); no forged document or electronic record identified under sections 468 and 471 PPC; and no unauthentic data or intent for wrongful gain established under sections 13 and 14 of PECA.
- (vii) Criminal liability remains individual. That the transactions may form part of a wider pattern does not displace the need to establish each account holder's role; the case rests substantially on documentary and electronic records already available or obtainable from banks, the platform or the regulator, so no convincing reason for custodial interrogation was shown.
- (viii) The bail was confirmed subject to fresh bail bonds of Rs. 1,000,000 each with one surety in the like amount for each petitioner, to the satisfaction of the trial court. The Court expressly reserved the application of any other law — including anti-money laundering, taxation or banking law — on independent material, and recorded that its observations were tentative and confined to the bail application.

5. Reasoning

Issue I — The status of virtual assets

The Court began with terminology. “Cryptocurrency” is a broad expression for digital assets based on cryptographic technology and distributed ledger or blockchain systems, of which Bitcoin is one example. A “stablecoin” seeks to maintain a relatively stable value by reference to another asset or unit of account, usually a fiat currency; USDT is a privately issued fiat-referenced stablecoin.

It then traced the evolution of international terminology. The Financial Action Task Force (FATF), in its Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers (October 2021, revising and superseding the June 2019 Guidance), defines a “Virtual Asset” as a digital representation of value that can be digitally traded or transferred and used for payment or investment purposes, expressly excluding digital representations of fiat currencies, securities and other financial assets already covered elsewhere in the FATF Recommendations. FATF's earlier publications — Virtual Currencies: Key Definitions and Potential AML/CFT Risks (2014) and Guidance for a Risk-Based Approach to Virtual Currencies (2015) — had used “virtual currency”. The Court regarded the shift from “virtual currency” to “Virtual Asset” as significant: a virtual asset may perform some economic functions associated with money, including payment or investment, but does not thereby become fiat currency or legal tender.

The Court noted FATF's definition of a Virtual Asset Service Provider (VASP) and its recognition of P2P transactions — virtual-asset transfers conducted without the involvement of a VASP or other intermediary subject to AML/CFT obligations, including transfers between users acting on their own behalf. Such transactions are not explicitly subject to those controls under the FATF Standards, which generally impose obligations on intermediaries rather than individuals, though countries may adopt national measures to mitigate P2P risks. FATF's approach is risk-based: it does not require virtual-asset activities to be treated as inherently high risk in every case, the assessment depending on the nature of the activity and the attendant circumstances.

Although the FATF Guidance is not binding as domestic law, the Court found it relevant in two respects: it provides a recognised basis for characterising USDT as a virtual asset rather than fiat currency or legal tender; and it shows that the legal character of a virtual asset is not fixed or uniform, depending instead on function and on the statute under which the question arises.

The regulators' positions

The three regulators filed written responses:

- PVARA — there is no uniform international classification of cryptocurrency; different jurisdictions treat it differently, and within a jurisdiction its character may vary with the token, the transaction and the regulatory context. Pakistan has enacted the VAA, which regulates virtual assets as a distinct statutory category and expressly clarifies that they are not legal tender. P2P transactions do not fall within PVARA's mandate, and the transactions here predate both the VAA and the 2025 Ordinance.
- SBP — virtual assets are not legal tender, and are not foreign currency or foreign exchange within the meaning of section 2 of FERA or section 19 of the State Bank of Pakistan Act, 1956. Whether they may be classified as commodities or securities falls within SECP's domain.

• SECP — there is no universally accepted classification. In the United States some cryptocurrencies have been treated as commodities, while other crypto-assets may be examined under securities law if the transaction satisfies the "investment contract" test in S.E.C. v. W.J. Howey Co. (328 U.S. 293) — a contract, transaction or scheme in which a person invests money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party. The European Union has taken a different approach under the Markets in Crypto-Assets Regulation, treating crypto-assets as a separate class of digital assets. Cryptocurrency cannot presently be regarded as a "security" under the Securities Act, 2015 or a "commodity" under the Futures Market Act, 2016; the VAA created a dedicated framework rather than folding virtual assets into pre-existing categories.

Issue I(a) and I(b) — The 2018 Circular and the later framework

The Court set out Pakistan's transitional phase. On 06.04.2018 the SBP issued BPRD Circular No. 03 of 2018, Prohibition of Dealing in Virtual Currencies/Tokens, stating that virtual currencies/tokens were not legal tender, were not issued or guaranteed by the Government of Pakistan, and that no individual or entity had been authorised or licensed for their issuance, sale, purchase, exchange or investment. Banks, DFIs, microfinance banks, Payment System Operators and Payment Service Providers were advised to refrain from processing, using, trading, holding, transferring value, promoting or investing in them, not to facilitate customers in transacting in them, and to report any such transaction to the Financial Monitoring Unit as suspicious.

By Circular No. ECD/M&PRD/PR/01/2025-36 dated 30.05.2025, the SBP clarified that the 2018 advisory had been issued to its regulated entities because of the absence of a legal and regulatory framework, and not because virtual assets had been declared illegal in the country. The Virtual Assets Ordinance, 2025 was promulgated on 08.07.2025 and was subsequently replaced by the VAA.

Read in that context, the Court held, the 2018 Circular did not by itself create a penal offence against private individuals: its addressees were regulated entities, not private persons transacting with each other, and the description of virtual currencies/tokens as "not legal tender" did not render them illegal or contraband. The Court accepted the submission that the Circular may have justified regulatory reporting or risk-based action by the entities addressed, but did not convert every private P2P virtual-asset transaction into a criminal offence. As for the VAA, its relevance was limited: it marks Pakistan's movement to a comprehensive regime but does not retrospectively determine criminal liability for earlier transactions.

Issue I(c) — FERA

Although FERA was not invoked in the FIR, the Assistant Attorney General argued that USDT, as a dollar-referenced digital medium, falls within the inclusive definition of "currency" in section 2(b) (which covers coins, currency notes, bank notes, postal notes, money orders, cheques, drafts, travellers' cheques, letters of credit, bills of exchange and promissory notes), and the definitions of "foreign currency" and "foreign exchange" in sections 2(c) and 2(d), so that the petitioners' role as P2P merchants attracted sections 4 and 5 and the penalties in section 23.

The Court rejected the argument at this stage on three bases:

• Comparative authority. In Internet and Mobile Association of India v. Reserve Bank of India [2020] 2 S.C.R. 297, the same question arose under section 2(h) of India's Foreign Exchange Management Act, 1999. The definitions are broadly similar, both listing recognised monetary and negotiable instruments — but section 2(h) of the Indian Act also includes "such other similar instruments as may be notified by the Reserve Bank", whereas Pakistan's FERA contains no corresponding residuary or notification-based mechanism. The Supreme Court of India noted that the RBI itself took the position that virtual currencies fell outside section 2(h), and that although it could have notified them as "other similar instruments", it had not done so. That reasoning is not binding but supports the view that virtual assets should not be brought within FERA merely because they perform some economic functions associated with money.

• The structure of FERA. Its provisions are framed around recognised currency, foreign currency, foreign-exchange balances, negotiable instruments, securities, gold, silver and regulated payment mechanisms. USDT does not naturally fall within the enumerated categories in section 2(b); it does not become foreign currency merely because it is traded internationally, or foreign exchange simply because its value is pegged to or determined by reference to a foreign currency.

• The regulators' responses. The written responses of PVARA, SBP and SECP support that conclusion.

The Court was careful to preserve FERA's potential application: where the surrounding arrangement involves a prohibited or regulated payment, conversion into or out of foreign currency, remittance of value to a person resident outside Pakistan, use of banking channels for foreign-exchange evasion, or any device designed to defeat the Act, FERA may apply on account of that statutory nexus — liability then arising from the foreign-exchange component rather than from the use of a virtual asset. Here no material showed that the petitioners dealt in recognised foreign currency, received or remitted foreign exchange, made any payment to or for the credit of a person resident outside Pakistan, or used any device to evade FERA. Their alleged receipts in Pakistani bank accounts might require further investigation but did not by themselves establish the required nexus.

Issue II — Whether the FIR offences are prima facie made out

The Court restated the principle that pre-arrest bail is an extraordinary relief intended to protect a person against arrest sought for mala fide reasons, as an abuse of process, or merely to humiliate him, and that such circumstances may in an appropriate case be inferred from the surrounding facts. The mere fact that the transactions involved virtual assets could not justify arrest. It then took the offences in turn:

• Section 419 PPC (cheating by personation). The FIR does not allege that any petitioner pretended to be another person, used a false identity, or induced the complainant by personating another; no fictitious profile, account or merchant identity was attributed to them. Mere receipt of money into their bank accounts, without more, does not prima facie constitute cheating by personation.

• Section 420 PPC (cheating). The provision requires deception and dishonest inducement to deliver property, and the prosecution must point to some basis for inferring dishonest intent at the inception of the transaction. On the FIR's own account the complainant purchased USDT through P2P merchants and the corresponding USDT was credited to accounts he used or controlled; nothing suggests the petitioners caused the platform's subsequent freezing of those accounts. The essential ingredient of dishonest inducement at inception was therefore not prima facie established — and the offence is in any event bailable.

• Sections 468 and 471 PPC (forgery for cheating; using a forged document or electronic record as genuine). The prosecution had not identified any document, electronic record, transaction confirmation, wallet credential, account record or platform entry allegedly forged by the petitioners or used by them as genuine. On the present record these provisions do not appear to be attracted.

• Section 13 PECA (electronic forgery). The offence turns on interference with or use of an information system, device or data which, by input, alteration, deletion or suppression, causes unauthentic data to result, with intent that it be considered or acted upon for legal purposes as if authentic. Its essence is the creation of unauthentic data through the specified electronic act coupled with the statutory intent.

• Section 14 PECA (electronic fraud). This is wider: it may apply even where no unauthentic data is created, provided there is intent for wrongful gain, together with interference, use, inducement or deception, and an act or omission likely to cause damage or harm.

Drawing that distinction, the Court held that the mere fact that a transaction was carried out through an online platform, or that virtual assets were transferred digitally, does not automatically establish electronic forgery or electronic fraud against every recipient of funds. For section 13 the prosecution must identify the information system, device or data allegedly used or interfered with so as to create unauthentic data; for section 14 it must point to some basis for inferring intent for wrongful gain together with interference, use, inducement or deception. The attribution to the petitioners was confined to specified bank receipts associated with alleged P2P transactions, with no material to show that they induced the complainant to use the platform, made any representation about its safety or legitimacy, acted in concert with its operators, created or manipulated data, or had any role in the freezing of the accounts.

The individual attribution being limited to the specified receipts, those receipts were on the present record consistent with routine P2P merchant activity — receiving Pakistani rupees and transferring the corresponding USDT. No evidence connected the petitioners with deception, dishonest inducement, forgery, unauthentic data, electronic fraud, or any role in the operation of the platform that froze the accounts.

Necessity of custodial interrogation

The Court accepted that financial and cyber offences may involve multiple accounts and fragmented transactions, and that the investigating agency is entitled to examine the role of each account holder — but held that criminal liability remains individual. The case rested substantially on documentary and electronic records already available to the agency or obtainable from the relevant banks, financial institutions, platform or regulator. The petitioners had joined the investigation and no misuse of the ad-interim concession was alleged. In those circumstances no convincing reason was shown why custodial interrogation was necessary.

Disposition. The application was allowed and the ad-interim pre-arrest bail confirmed, subject to fresh bail bonds of Rs. 1,000,000 each with one surety in the like amount, to the satisfaction of the trial court. The Court recorded that its discussion does not exclude the application of any other law — including anti-money laundering, taxation or banking law — where its ingredients are established on independent material, and that its observations are tentative and confined to the bail application, the trial court being required to decide the case independently on the evidence before it.

6. Points of Wider Significance

Beyond the bail outcome, the order is of interest for its treatment of virtual assets, on which the Court had the benefit of written responses from all three relevant regulators:

- It records a considered judicial position that USDT — and, by extension, cryptocurrency generally — is a virtual asset: neither legal tender, nor "currency", "foreign currency" or "foreign exchange" under FERA, nor a "security" under the Securities Act, 2015, nor a "commodity" under the Futures Market Act, 2016.
- It confirms that the 2018 SBP Circular was regulatory rather than penal in effect, and did not criminalise private P2P dealing — a point of practical importance for the many transactions that took place before the 2025 Ordinance and the VAA.
- It holds that the VAA does not operate retrospectively to determine criminal liability for pre-enactment transactions.
- It leaves open a clear route for prosecution where a genuine foreign-exchange nexus exists, and expressly preserves anti-money laundering, taxation and banking law — so the order should not be read as a general immunity for virtual-asset dealing.
- Its observations are, by its own terms, tentative and confined to the bail application; the classification analysis is nonetheless likely to be cited in future proceedings.

Prepared by Mandviwalla & Zafar, Advocates. This summary is a working note on the order and does not substitute for the operative text. The Court's observations are expressly tentative and confined to the bail application.