

IN THE HIGH COURT OF SINDH AT KARACHI

Present: Mr. Justice Jawad Akbar Sarwana

Criminal Bail Application No. 2029 of 2025

Applicant : Peer Muhammad s/o Basheer Khan
through Mr.Saddiqullah, Advocate

Respondent : The State
Through Ms. Amna Ansari, APG

Date of Hearing : 05.08.2025, 12.08.2025, 22.08.2025

Date of Decision : 28.08.2025

ORDER

Jawad Akbar Sarwana, J.: Through this post arrest bail application, the 20 years old applicant, Peer Muhammad s/o Basheer Khan, seeks bail in FIR No.240/2025 initially registered under Section 337-G P.P.C. at P.S. North Nazimabad, Karachi, whereafter the I.O. added Sections G334/337-F(I)/337-A(I) r/w 337-G/337-R/427 P.P.C. The bail application of the present applicant stands dismissed by the Additional Sessions Judge-VII/MCTC-02, Karachi Central vide Order dated 22.07.2025.

2. The bench issued notices to the injured, but there has been no response; none have appeared on his behalf, and no intimation has been received. Notice was also issued to the I.O. who initially investigated the crime; however, he has since retired on 04.08.2025 and was replaced by another I.O. ("Second I.O."). Thus, the bench has heard the applicant's counsel, the Additional Prosecutor General, and the Second I.O., and has perused the record. The observations of this bench are articulated below.

3. From the perusal of the FIR, the case of the prosecution is that on 09.06.2025, in the evening, the accused, while operating a chingchi loader rickshaw no.LC-3168 from KDA Chowrangi towards Hyderi had an accident near Dolman Mall with a motorcycle being operated by one Salman, who got injured in the

said accident, and allegedly the accused fled from the scene. Thereafter, on 14.06.2025, based on spy information, ASI, Syed Tauseef Ur Rehman, found himself in a hospital, where he met with the brother of the injured, Salman, and found out that he was severely wounded in the ICU, and according to the First I.O., one of his legs below the knee had to be amputated. Based on further information and inquiry, the accused applicant was arrested, as well as the crime property, i.e. the chingchi loader rickshaw, was impounded apparently from North Nazimabad, Karachi.

4. Counsel for the applicant/accused contends that the accident took place due to the fault of the injured, Salman and not the accused/applicant. He argues that the accused was not negligent and was not operating his vehicle recklessly. There are no witnesses to the accident, and no CCTC footage is available. He claims that the information between the FIR and the Challan, which is available on record, has several contradictions, including, but not limited to, the following: (i) how the complainant found himself at the hospital when he was not present on the spot on the date of incident; (ii) the hospital is disclosed in the FIR as Aga Khan Hospital but in the Challan, the I.O. states that he got information from brother of injured at Abbasi Shahid Hospital; (iii) there is delay of more than one (1) week between the date of the accident and its reporting, (iv) the injured did not identify the accused/applicant, which begs the question how the accused/applicant got identified by the Complainant/I.O. and arrested; etc. This bench has perused the documents, and is minded to accept the applicant/accused counsel's submission that the above points are subject to the final outcome of the trial, and call for further investigation/inquiry.

5. It is pertinent to note here too that it is not the prosecution's case that the applicant/accused had any motive to hit Salman or that he hit him intentionally. The FIR describes the event which

caused injury to the accused as “an accident.” Thus, although the injury attributed to the applicant/accused has resulted in the amputation of part of the leg of the injured (below the knee), resulting in the I.O. challan under the non-bailable Section 334 Cr.P.C., yet the FIR, in the first instance, mentioned only the bailable offence under Section 337-G. Thus, while the remaining sections introduced in the challan are all bailable, Section 334 raises further questions as to whether the applicant/accused was driving recklessly, negligently or with the intention to cause hurt, which issue too becomes a matter of evidence and at this stage of proceedings, one that requires further inquiry.

6. The prosecution has claimed that the applicant/accused did not have a valid permit to operate a chingchi loader rickshaw, and his valid license is not a defence. Prosecution argues that an offence for this is made out under the sections listed in the challan as mentioned above in the first paragraph of this Order. Be that as it may, the line of submission adopted by prosecution on this score does not support their claim to reject the bail application, as the lack of a permit may constitute a breach of some other law, but it is not material in the facts and circumstances of this case to reject bail to the applicant/accused.

7. The key ground on which the lower forum rejected bail to the applicant/accused, and one which the prosecution has vehemently argued to deny bail to the applicant/accused, is that the applicant/accused is an Afghan national. Prosecution submits that given the ethnicity and non-immigrant status of the applicant/accused, to extend bail to the young man is a flight risk, and if this bench grants him bail, he is likely not to join the trial and abscond and disappear into Afghanistan. The prosecution has relied on Muhammad Hashim Zamani v. The State, 1989 PCr.L.J. 1492 (“MH Zamani case”), which involved a bail matter involving an Afghan national whom the Pakistan Customs found in possession of narcotic substances. The learned single Judge

observed in that case that Afghan nationals were entrenched in smuggling of narcotics, and the Courts should take note of such a situation and adopt a strict view while exercising discretion in granting bail to such offenders. Prosecution also relied on another case, namely Ahudha Manliki v. The State, PLD 2007 Karachi 110 ("Ahudha case"), wherein the Anti-Narcotics Force ("ANF") found a black African National in possession of heroin. The division bench of this Court, observed that as the applicant is a foreign national, the possibility of absconding could not be ruled out and once he leaves the country through any illegal method his attendance could not be procured to face the trial even if his and his surety's bail bonds are cancelled and surety amount is recovered from the surety. Therefore, the prosecution argued that the applicant/accused's post-arrest bail application ought to be rejected based on these two authorities.

8. In contrast, the Counsel for applicant/accused relied on a recent judgment of the Islamabad High Court in Rahil Azizi v. the State and Five (5) Others, PLD 2024 Islamabad 231 ("Ms Rahil Azizi case"), wherein the applicant/accused, an Afghan national and female, Ms. Rahil Azizi, having escaped from war-torn Afghanistan, had crossed the border and entered Pakistan illegally. She did not have a visa to enter Pakistan and was arrested in a FIR filed by the FIA for an offence under Section 14(2) of the Foreigners Act, 1946, and sent to Adyala Jail. The learned single Judge of the Islamabad High Court observed that Ms. Rahil Azizi had registered herself with UNHCR, which certified her status as a potential refugee seeking asylum in a third country. When Australia accepted her asylum application, the only thing holding her up in Pakistan was an FIR charging her with illegal entry into Pakistan, due to which the Ministry of Interior was refusing to issue an exit permit to allow her to travel to Australia. The learned Judge observed that:

“It is in this context that Section 14(2) of the Foreigners Act is to be read together with Article 4, 9, 10-A and 14 of the Constitution, while also taking into account the entrenched principles of international law that recognize the right of refugees to being safe, to not be treated as criminals, and to seek asylum in a foreign country. . .

. . .The impugned orders disregarded the protection of life and liberty afforded by Article 9 to any person for the time being in Pakistan. . . .”

9. I have considered the cases relied upon by the Counsel and Prosecution. First, the MH Zamani and Ahudha cases are distinguishable on the factual plane. Both cases involved narcotic substances and non-bailable offences. The facts, circumstances of arrest and general background of this case are very different from the two authorities. Secondly, the MH Zamani case was announced in the late 1980s when the menace of drug trafficking to and from Afghanistan was at its peak. This explains the observations made by the learned Judge, which are relatable to the culture and signs of the times of the 1980s, and impression concerning drug trafficking involving Afghanistan and Afghan nationals. The learned single Judge’s such views cannot be extended to traffic accidents, and the same is the case with the views of the Division Bench in the Ahudha case. Accordingly, for the above reason, given the facts and circumstances of the case, this bench is not persuaded by the applicability of or reasoning found in the two authorities cited by the prosecution, which are clearly distinguishable from the facts of the present case.

10. Further, it cannot be argued, across the board, that foreign nationals, whether or not they are Afghan nationals, who have been taken into custody in Pakistan, are not entitled to the concession of bail. Bail cannot be withheld as punishment on an accusation of non-bailable offences against an accused simply because of the nationality of the accused. This would be absurd.

It is also a trite principle of law that an accused, charged with a criminal offence, ordinarily cannot be kept in custody for the purpose of punishment. The object of a criminal trial is to make the accused face the trial and not to punish an under-trial prisoner for the offence against him with continuing trial for the accused albeit only behind bars till the conclusion of the trial. The same would amount to punishment. The point is that each case must be dealt with on its own merits, and the Court is empowered to decide each post-arrest bail application based on the case record and the material available on record of that particular case.

11. In the present scenario, a tentative assessment of the evidence shows that the applicant/accused is a permanent resident of Pakistan having a valid Afghan Citizen Card (“ACC”). The parents of the accused/applicant, both father and mother and his three siblings/brothers all have an ACC. While the reverse side of the ACC of the accused/applicant, evidences that the ACC had expired on various dates between 2021 and 2023, as per the Notification No.F.4(1)-RR/2024 dated 22.07.2024 issued by the Government of Pakistan, Ministry of States and Frontier Regions, Islamabad, the Government extended the validity of the Proof of Registration (“PoR”) cards issued to the registered Afghan refugees by NADRA with effect from 15th July 2024 to 30th June 2025.¹ Therefore, at the time of the crime's occurrence, the applicant/accused was not an undocumented immigrant and had valid residency. Additionally, as per yet another Notification No.F.4(6)-RR/2025 dated 04.07.2025, issued by the above-mentioned Ministry of the Government of Pakistan, all relevant Departments/Agencies have been advised to ensure that no harassment or adverse action is taken against registered Afghan Refugees holding POR cards till the final decision in this regard. This most recent notification implies that

¹ See High Court of Balochistan, Order dated 06.05.2025, paragraph 6 in Criminal Bail Application No.163/2025 in Noor Muhammad v. The State.

when the bench heard this matter, the applicant/accused was a legal resident of Pakistan and may remain so until a further decision of the Federation.

12. Without prejudice to the above, prima facie, it is apparent that until such a decision of the Federation, as above, the applicant/accused and his immediate family are continuing to reside in Pakistan, legally. The family is earning their wage(s) and daily bread and butter in Pakistan and are economically entrenched in Pakistan. Therefore, the applicant/accused may not be an imminent flight risk, as apprehended by the prosecution, and this bench is inclined to exercise its discretion in favor of the glass half-full rather than half-empty, and given the facts and circumstances of the case, extend the concession of bail to the applicant/accused, with the caveat that exercise of such discretion is not the norm and varies from case to case depending on the facts and circumstances peculiar to each case.

13. Given the above, the case of the applicant/accused calls for further enquiry. The punishment for the offences alleged also does not fall within the prohibitory clause of section 497 Cr.P.C. Thus, the grant of bail is the rule and its refusal is an exception. In the facts and circumstances of the case, the applicant/accused has made out a case and accordingly is admitted to post-arrest bail. He is ordered to be released on bail, **subject to furnishing a surety bond in the sum of Rs.100,000 [Rupees One Lac Only) along with P.R. bond in the like amount to the satisfaction of the learned trial Court.** The learned Second I.O. has informed this bench that he has submitted the challan to the trial Court, which fact is confirmed by the prosecution. The trial Court is directed to complete the trial of the case within three (3) months. The Second I.O., present in Court, is directed to produce all witnesses before the trial court as soon as possible at his own responsibility. No adjournment shall be granted unless otherwise unavoidable, and dates of hearing shall not extend

beyond seven to ten days, so that the applicant/accused is bound to appear on each hearing date, and to mitigate the flight risk apprehended by the prosecution. The trial Court has absolute discretion to take appropriate action, including but not limited to cancelling the concession of bail and/or taking the applicant/accused into custody, etc., if it finds that the applicant/accused is misusing the concession granted to him by this Order. The compliance report of the trial Court shall be sent to the MIT branch of this Court for the purpose of monthly monitoring.

14. Needless to state that observations herein are tentative and nothing herein shall be construed to prejudice the case of either side at trial.

J U D G E