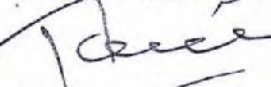


PRESENTED ON

15-02-2025



Deputy District Judge

932

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application No. / 2025

430

Mst. Anam

D/o Waris

Muslim, adult, Presently

Confined in Judicial Custody

In Women Jail at Karachi ----- Applicant / Accused

VERSUS

The State ----- Respondent

FIR No. 616/2024

U/s. 381/34 PPC

P.S. Gizri, Karachi

BAIL APPLICATION UNDER SECTION 497 CR.P.C.

THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No. 430 of 2025

Applicant : Mst. Anam
through M/s. Azizullah Kumbhar
& Jawed Jabbar Kalochi, advocates

Respondent : The State
Mr. Qamaruddin Nohri,
Deputy Prosecutor General

Complainant : Rahul Ray
through Mr. Muhammad Ayoub
Chaniho, advocate.

Date of hearing : 17th March, 2025

Date of Order : 17th March, 2025

ORDER

Jan Ali Junejo, J.-- The applicant/accused has filed the present criminal bail application seeking post-arrest bail in connection with FIR No.616 of 2024, registered at P.S. Gizri, Karachi, under Sections 381/34, of the Pakistan Penal Code (PPC). Initially, the applicant/accused approached the learned Sessions Court, through Bail Application No.171 /2025, which was dismissed vide Order dated: 22-01-2024 passed by the Court of learned Ist Additional Sessions Judge, Karachi-South.

2. The facts relevant to the present criminal bail application are as follows:

"The complainant, namely Rahul Rai, residing at House No. 2 and running a business, hired two maids



[2]

on 11.12.2024 for household work after they agreed to provide their CNICs. On 14-12-2024, the complainant left for a wedding in Islamabad, locking the upper-floor room and dropping his wife at her parents' house. The maids worked until 16.12.2024 but then stopped coming. Upon returning on 19-12-2024 at around 2200 hours, the complainant found the room lock tampered with and discovered a burglary. Stolen items included 60 tolas of gold jewelry, two wristwatches, one Versace and Tagues, prize bonds worth 350,000 PKR, and 3,000 US dollars 200 bonds of worth Rs.200,000/-. The complainant reported the incident to police helpline 15, and the Crime Scene Unit (CSU) inspected the scene. He now seeks legal action against the two unidentified maids for theft and tampering with the lock".

3. The learned counsel for the applicant has argued that the Applicant is innocent and has been falsely implicated in the case, with no direct evidence linking them to the alleged theft. He further contends that the investigation is ongoing, and the Applicant has cooperated fully with the authorities. He argues that the Applicant has deep roots in the community and no criminal record, and is willing to abide by any conditions imposed by the court. He also contends that the allegations are based on circumstantial evidence, and the Applicant's continued detention is unnecessary and punitive. He prays for the grant of bail, emphasizing the principle of "bail, not jail", and assures the court of the Applicant's availability for trial.



4. The Learned Counsel for the Complainant vehemently opposes the bail application, emphasizing the seriousness of the offense, which involves the theft of high-value items, including gold jewelry, luxury watches, and cash, warranting strict judicial scrutiny. He argues that granting bail poses a significant risk of evidence tampering and witness intimidation, potentially jeopardizing the ongoing investigation. Given the severe penalties associated with the offense, there is a strong likelihood of absconding, which could undermine the judicial process. He highlights that the circumstantial evidence, particularly the recovery of Rs. 4,00,000/- from the Applicant, strongly implicates their involvement despite the absence of direct evidence. Furthermore, he asserts that releasing the Applicant at this stage could erode public confidence in the judicial system, especially when the investigation is incomplete. He disputes the defense's contention that the offense falls under Section 411, PPC, arguing that Section 381, PPC is equally applicable, and such determinations should be left for trial. Moreover, he contends that continued detention will cause no prejudice to the Applicant, as the trial can be expedited. Therefore, in light of the gravity of the offense, potential for obstruction of justice, and risk of flight, he prays for the dismissal of the bail application, urging the court to prioritize justice over leniency.



5. The learned DPG contends that the Applicant is directly involved in a serious offense involving theft of high-value items, including gold jewelry, watches, and cash, which warrants strict scrutiny. He further contends that the Applicant's release on bail could jeopardize the ongoing

[A]

investigation, as there is a risk of tampering with evidence or influencing witnesses. He argues that the gravity of the offense and the potential for the Applicant to abscond, given the serious penalties involved, justify the denial of bail. He also contends that the circumstantial evidence strongly implicates the Applicant, and their release could undermine public confidence in the judicial process. He prays for the dismissal of the bail application, asserting that the Applicant's detention is necessary to ensure a fair trial and prevent further criminal activity.

6. I have carefully considered the arguments presented by the learned counsel for the Applicant/Accused as well as the learned Additional Prosecutor General and counsel for complainant. Additionally, I have examined the material available on record with the utmost care and judicial prudence, keeping in view the principle of tentative assessment. Upon such assessment, the following findings are made: The Applicant is not named in the FIR, which was registered against two unidentified maids. The prosecution has failed to establish any direct link between the Applicant and the alleged theft. No identification parade was conducted to connect the Applicant with the crime. The absence of such a critical step in the investigation weakens the prosecution's case against the Applicant. Although the Crime Scene Unit (CSU) visited the complainant's house and collected evidence, the fingerprints of the Applicant were not sent for comparison with those secured from the crime scene. This omission raises serious doubts about the prosecution's claim of the Applicant's involvement. No witness has come forward to state that he saw the Applicant



[5]

committing the burglary. The prosecution's case relies entirely on recovery, which is yet to be proved by the prosecution at the time of trial. It is a highly debatable question whether the offense allegedly committed by the Applicant falls within the ambit of Section 381, PPC or Section 411, PPC. The prosecution has only alleged the recovery of Rs. 4,00,000/- from the Applicant, which, at most, falls under Section 411, PPC. This offence does not fall within the prohibitory clause of Section 497(1), Cr.P.C. Therefore, the Applicant is entitled to bail under the law.

7. In light of the aforementioned findings, the Applicant is clearly entitled to the grant of bail. In similar circumstances, the Honourable Supreme Court granted bail to the accused in the case of *Muhammad Tanveer v. The State and another* (PLD 2017 Supreme Court 733), wherein it was observed that: "None has witnessed the lifting of the motorbike and no evidence to that effect is available on record, therefore, the insertion of section 381-A, P.P.C. appears not only unjustified but also speaks mala fide of the police. Whether in the peculiar circumstances of the case, the petitioner is liable to be prosecuted under section 381-A, P.P.C. or 411 P.P.C., is a debatable question to which the Trial Court shall give due consideration, being a borderline case and when none of the two offences are punishable with imprisonment falling within the prohibitory limb of section of 497, Cr.P.C. then, refusing to grant bail to the petitioner would be highly unjustified".

8. For the reasons outlined here-in-above, the Applicant is granted post-arrest bail subject to furnishing a bail bond in the sum of Rs. 200,000/- with one surety in the like amount to the



[6]

satisfaction of the trial Court. It is expressly clarified that the observations and conclusions rendered in this order are strictly limited to the disposal of the present bail application and do not constitute an opinion on the merits of the case. These remarks shall not be interpreted as prejudicing the rights, claims, or defenses of either party—prosecution or defense—during the trial proceedings. The trial Court shall adjudicate the matter independently, uninfluenced by any findings articulated herein, and solely based on evidence adduced and legal principles applicable at the appropriate stage.


JUDGE



THE HIGH COURT OF SINDH, KARACHI
CERTIFIED TO BE TRUE COPY

(MUHAMMAD SARFARAZ)
I/C: ASSISTANT REGISTRAR (COPYING)

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OFFICE ASSOCIATE

(MUHAMMAD SARFARAZ)
I/C: ASSISTANT REGISTRAR (COPYING)

TOTAL: RS: Nil 1/-