

# IN THE HIGH COURT OF SINDH AT KARACHI

## Criminal Bail Application No. 560/2025

Applicants : Tehseen Babar son of Wazeer,  
through Mr. Mirza Sarfaraz Ahmed, Advocate

Respondent : The State  
through Ms. Rubina Qadar. D.P.G. Sindh.

Complainant : Muhammad Haneef,  
through Ms. Lubna A. Abbasi, Advocate

Date of hearing : 11-04-2025

Date of order : 24.04.2025

### **ORDER**

**KHALID HUSSAIN SHAHANI, J.** – The applicant Tehseen Babar seeks post-arrest bail in case bearing crime No.680/2024, offence u/s 302 PPC of P.S Surjani Town Karachi. Bail plea of applicant was declined by the learned Additional District Judge-X, Karachi West, vide order dated 07.02.2025.

2. As per the prosecution's version delineated in the FIR, complainant Muhammad Haneef reported that his daughter Fozia was married to Tehseen Babar, son of Wazeer Ahmed, and that two children were born from the said wedlock. The couple was residing at House No. L-297, Sector-6, Ghaffar Masjid, Surjani Town, Karachi. On 21.05.2024, while the complainant was at his residence, he received a phone call from his son-in-law Tehseen Babar, who informed him that upon returning home, he found the door unanswered. Subsequently, his daughter contacted him, prompting him to enter the house, where he allegedly found his wife lying motionless with her back facing upwards. He further stated that she was in a critical condition and that he was shifting her to Abbasi Shaheed Hospital. Thereafter, Tehseen Babar disconnected his phone. After some time, he again contacted the complainant and conveyed that Fozia had passed away. Upon receiving this information, the complainant travelled from Hyderabad to Karachi, met Tehseen Babar, and after the deceased was placed in the

mortuary, they jointly approached the police and met ASI Khadim Hussain. The WMLO reportedly noted signs of violence on the deceased's face. Following the funeral rites and after seeking consultation, the complainant developed suspicion that his son-in-law had murdered his daughter for reasons unknown. Accordingly, the instant FIR was lodged.

3. Learned counsel for the applicant/accused adopted the grounds urged in the memo of bail and further submitted that the FIR was lodged after an unexplained delay of fifteen days, which in itself gives rise to serious doubt, particularly when the same was registered following consultations by the complainant. It was argued that the FIR is based solely on suspicion, and notably, the applicant himself informed the complainant of the incident, remained present at the hospital, and also attended the funeral. Counsel contended that no motive has been brought on record suggesting any reason for the applicant to have committed the alleged offence. It was further submitted that the matter was investigated twice, and on both occasions, the investigating officer submitted reports under *A-Class* owing to lack of incriminating evidence. The statements of area residents indicate that the couple was living a contented and harmonious marital life. Additionally, CDRs and other corroborative material establish that the applicant was present at his workplace, a boutique located in Clifton, throughout the day in question. This assertion is further substantiated by independent witnesses. No direct or circumstantial evidence has been brought on record to implicate the applicant in the alleged homicide. Counsel submitted that the applicant entered the premises from a neighboring wall, accompanied by local women, and immediately informed the complainant about the situation. He argued that this is a case of blind murder, and that the investigating officer failed to obtain the CDR of the deceased or gather other relevant material to unearth the true facts. In support of his contentions, reliance was placed on the judgments reported as 2011 SCMR 1945, 2017 SCMR 130, 2021 SCMR 87, 2006 MLD 595, 2006 MLD 829, 2006 YLR 1202, 2007 P.Cr.L.J 1555, 2007 YLR 277, and 2008 MLD 465.

4. Conversely, the learned Deputy Prosecutor General for the State, duly assisted by the learned counsel for the complainant, opposed the bail plea with vehemence. It was argued that the FIR, though lodged with some

delay, is not devoid of substance, and the surrounding circumstances coupled with the medical evidence sufficiently create a nexus between the accused and the unfortunate death of the deceased. It was contended that the presence of violence marks on the face of the deceased, as observed by the Medico-Legal Officer, lends prima facie support to the allegation that her death was not natural. The prosecution emphasized that the accused was the last person known to be in contact with the deceased and that his inconsistent conduct, including the switching off of his mobile phone soon after informing the complainant, raises substantial suspicion regarding his involvement. It was further argued that the matter pertains to a custodial death occurring within the matrimonial home, and in such circumstances, the burden falls upon the spouse to furnish a plausible explanation for the cause of death, which the applicant has failed to provide as per the article 122 of Qanoon-e-Shahadat Order, 1984. The State contended that the applicant's assertion of being at his workplace throughout the day cannot be accepted at this stage without full-fledged evidence, particularly when the recovery, scene of incident, and surrounding facts suggest otherwise. The plea of alibi raised by the accused is a matter to be tested at trial and cannot be conclusively determined at the bail stage. The learned counsel for the complainant supplemented that the accused took active steps to control the narrative from the beginning, including taking the deceased to the hospital without informing other family members, and attempted to portray the death as natural, whereas the medical findings suggest otherwise. These circumstances, taken cumulatively, cast a serious shadow over the applicant's claim of innocence.

**5.** From the perspective of my tentative assessment, it appears that the FIR in question was not registered by complainant with promptitude and it was too registered after consultation, thus the exaggeration of the facts and false implication cannot be ruled out. Record reflects that during initial investigation, Investigating Officer submitted report under "A" Class for want of incriminating evidence. Thereafter, the matter was further investigated and second Investigating Officer also arrived at the same conclusion, opining that no tangible or credible evidence had surfaced against the accused.

6. The plea of alibi raised by the applicant at the time of arrest was duly investigated and corroborated by the statements of his co-workers, who affirmed his presence at his workplace throughout the relevant time coupled with his CDR. Additionally, second Investigating Officer recorded statements of local residents who confirmed that the accused had entered the premises by scaling the neighboring wall, as the house was found locked from the inside. These statements negate the impression of concealment or surreptitious conduct on part of the accused. The investigative record further discloses that the couple were perceived as living a contented matrimonial life. The case, therefore, presents two competing narratives, one advanced by the complainant, and the other supported by both investigative reports. While it is evident that the deceased met an unnatural end, the surrounding facts and circumstances remain enshrouded in mystery, devoid of any direct or circumstantial evidence that would *prima facie* link the applicant/accused with the commission of the alleged offence. In such a situation, where two plausible versions emerge and the investigative findings favor the accused, the case undeniably calls for further inquiry within the contemplation of Section 497(II) Cr.P.C.

7. In the instant case, the only material against the applicant appears to be circumstantial, the fact of deceased being found dead inside the house, the marks of violence noted by the MLO, and the suspicious conduct of the accused in the aftermath does not support with any kind of independent corroboration. No eyewitness account, direct evidence, or forensic link has been brought on record to connect the applicant with the alleged offence.

8. It is true that in terms of the principle laid down by the Hon'ble Supreme Court in *Abdul Majeed v. The State* (2011 SCMR 941), the burden to prove the case beyond reasonable doubt remains upon the prosecution and does not shift to the accused, yet, the evidentiary threshold at the bail stage is distinguishable. The Court is not required to evaluate the entire prosecution case as if conducting a trial, but merely to assess whether a *prima facie* case is made out or whether the matter calls for further inquiry under Section 497(2) Cr.P.C.

9. In light of the foregoing, and applying the settled principle that mere suspicion, however strong, cannot substitute legal proof, the case against the applicant/accused appears to be one of further inquiry attracting the provisions of Section 497(II) Cr.P.C. Accordingly, he is admitted to post-arrest bail subject to furnishing solvent surety in the sum of Rs.300,000/- (Rupees three hundred thousand only) and a P.R. bond in the like amount to the satisfaction of the learned trial Court.

**J U D G E**