

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail. Application No. 598 of 2025

Applicant : Asmatullah son of Badshah Khan
through Mr. Sajeel Rehman, Advocate

Respondent : The State
Ms. Hina, A. P. G. Sindh.

Date of hearing : 18.04.2025

Date of order : 18.04.2025

ORDER

KHALID HUSSAIN SHAHANI, J – The applicant Asmatullah seeks post arrest bail in a case bearing crime No. 124 of 2023 offence under Sections 395/34 PPC of PS F. B. Area, Karachi. Bail of the applicant was declined by the learned Additional Sessions Judge-II Karachi Central vide order dated 21.02.2025.

2. The pertinent facts are that on 31-05-2023 at about 2:15 a.m, the complainant Fazal ur Rehman and his friend Khaista Rehman were at the complainant's shop when four Afghani Pathan men entered. One of them asked for an easy load recharge, and as the complainant picked up his phone, the other three entered, two of whom pointed TT pistols at him and threatened to shoot if he made noise. One of them slapped the complainant, and they robbed him at gunpoint of Rs. 52,000, a Samsung phone and also took Khaista Rehman's mobile phone and another phone (VIVO of Asif) that was being charged. The suspects fled on motorcycles, one of which had the registration number KOU-0626 (Unique brand). The complainant threw stones at them, prompting the suspects to fire gunshots, which caused injuries to him. He sought treatment at Abbasi Hospital and later came with his brother to lodge FIR.

3. Learned counsel mainly argued that the applicant/accused is innocent and has falsely been implicated in the case with malafide intentions and ulterior motives. He has further argued that the applicant/accused is not named in the FIR nor the specific role assigned to him in the alleged crime, which is unwitnessed by any of the persons of

the locality where the alleged incident took place. It is also argued that the applicant/accused was arrested on 03.06.2023 and identification parade test was held on 07.06.2023 with delay of four days. He further argued that co-accused Bismillah, Naimatullah, Abdullah and Rozi Khan were granted bail by the learned trial court and the case of the present applicant is on same footing with co-accused and present applicant is also entitled for the same relief. He lastly prays for grant of post-arrest bail to the applicant/accused.

4. Learned A.P.G. has opposed the bail application on the ground that the recovered motorcycle, which was identified by the complainant, was the one on which the applicant and the co-accused were riding when they were arrested by the police. She claims that case of the present applicant is on different footings than that of co-accused Abdullah and Rozi Khan. She prayed for the dismissal of the bail application.

5. I have heard learned counsel for the parties and perused material available on record.

6. From perusal of the record, it appears that the trial of the case despite lapse of about two years has not yet been concluded. The applicant is behind the bar since his arrest, i.e. 03.06.2023. However, access to justice has been recognized as a fundamental right. In this regard, reference may also be made to the cases of Sharaf Faridi v. Federation of Pakistan (PLD 1989 Karachi 404), Government of Balochistan v. Azizullah Memon and others (PLD 1993 SC 341), Al-Jehad Trust v. Federation of Pakistan and others (PLD 1996 SC 324), Mehram Ali and others v. Federation of Pakistan and others (PLD 1998 SC 1445) and Shaikh Liaqat Hussain v. Federation of Pakistan (PLD 1999 SC 504). It is right of every accused to stand trial within a reasonable time. It is proverbial that justice delayed is justice denied. Delay in trial, particularly when it amounts to abuse of process of law or of court, has always been recognized as a ground for the grant of bail, before its incorporation in statute in the shape of third and fourth provisos to subsection (1) of section 497 of the Code of Criminal Procedure, 1898, as well as after their repeal. Its incorporation in the statute had the effect of simply regulating Court's discretion. Thus, in my opinion, inordinate delay in trial, which in the present case is 22 months,

is not only abuse of the process of law and of court, but violation of fundamental right of access to justice as well. It must be remedied without any further loss of time. The instant remedy in the present case will be to release the applicant on bail immediately, which cannot be denied to him on any ground. The Honourable Supreme Court in the case of Adnan Prince v. The State through P.G. Punjab and another [PLD 2017 S.C. 147], while dealing with the identical issue has observed as under:

“14. The inordinate and shocking delay in the conclusion of trial in this case has made out a case for grant of bail which cannot be refused to the petitioner on any ground much less justifiable.”

7. Besides above, record also reflects that co-accused namely; Abdullah and Rozi Khan have been granted post-arrest bail by the learned trial court vide order dated 13.02.2025. In criminal cases rule of consistency applies when the accused has identical role with the co-accused then he is entitled for the same relief. Reliance can be placed on case titled as Pir Bakhsh v. The State and others [2010 MLD 220], wherein it is held as under:-

“6. Rule of consistency is always taken into consideration by the Courts since long because a person cannot be denied for the grant of bail whose case is at par of an accused who had already been released on bail. The Courts have to give equal treatment to the accused persons having one and the same role in the same case. Reliance upon the cases of Muhammad Fazal alias Bodi v. The State (1979 SCMR 9), Khadim Hussain v. The State (1983 SCMR 124), Manzoor Ahmad and others v. The State (PLJ 1999 Cr.C. (Lahore) 570) and Muhammad Daud and another v. The State and another (2008 SCMR 173). As the case of the petitioner is at par with that of his co-accused Zulifqar and Ghulam Rasool who had already been allowed bail by the learned Additional Sessions Judge, therefore, following the rule of consistency, the petitioner is also entitled to the bail.”

8. According to prosecution's case four unidentified individuals having armed on gunpoint committed alleged offence, therefore, it is to be seen, whether ingredients of Section 395 PPC attract to the case of the applicant or otherwise.

9. The applicant/accused is neither previously convicted nor hardened criminal. Moreover, the applicant/accused has been in continuous custody since his arrest and is no more required for any

investigation nor the prosecution has claimed any exceptional circumstance, which could justify keeping him behind the bars for an indefinite period pending determination of his guilt. It is well settled that while deciding the bail application lesser sentence out of an alternate sentence may be taken into consideration for determining whether the case falls under the prohibitory clause of Section 497(1) Cr. P.C., I am of the tentative view that at the most section 397 PPC attract to the case from tentative assessment and lesser punishment provided for such offence is seven years, hence, case of the applicant do not fall within the prohibitory clause of Section 497(1) Cr.P.C and bail in such like cases is a rule and its refusal an exception.

10. Given the above, the applicant has succeeded to make out a case for further inquiry as envisaged under Section 497(2) Cr.P.C. Accordingly, he is admitted to bail, subject to furnishing a solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand only) and a P.R. bond in the like amount to the satisfaction of the learned trial Court.

11. The above observations are tentative and shall not prejudice the case of either party during the trial.

J U D G E

M.Zeeshan