

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 732/2025

Applicant : Arsalan son of Waqar Ahmed,
Through Mr. Khawaja Saif ul Islam, Advocate

Respondent : The State
through Mr. Qamaruddin Nohri, Addl. P.G.

Date of hearing : 11.04.2025

Date of order : 25.04.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicant Arsalan seeks post-arrest bail in a case bearing crime No.131/2023, offence u/s 302/34 PPC of P.S Gulistan-e-Jauhar Karachi. The bail plea of the applicant was declined by the learned Additional Sessions Judge-I/Model Criminal Trial Court, Karachi East, vide order dated; 28.12.2024.

2. According to the prosecution theory, on 26.02.2023, at about 2012 hours, while complainant Syed Tanveer Ahmed was present at his residence, he heard gunshots. Upon stepping onto the terrace, he observed two unidentified individuals fleeing on a motorcycle towards the main road. When the complainant rushed outside, he found his brother, Syed Khalid Raza, lying in a pool of blood near the wall of Masjid Farooq-e-Azam, visibly wounded on the head. The injured was shifted to Memon Hospital where he was pronounced dead. The police reached the scene, completed requisite legal formalities. Consequent upon; case was registered inter-alia on above facts.

3. Learned counsel contended that applicant is innocent and has been falsely implicated. It was argued that the FIR does not nominate the applicant, being initially lodged against unknown individuals. Counsel highlighted that there was an unexplained delay of one day in registration of the FIR. He submitted that no identification parade was conducted, nor is there any eyewitness to the occurrence. The alleged

recovery of mobile phone from the applicant was described as planted, particularly in light of the absence of any private mashir at the time of alleged recovery, despite the populated nature of the area. Counsel further asserted that there exists no direct or circumstantial evidence linking the applicant to the offence; rather, he has been implicated on the basis of a statement by a co-accused. It was argued that the alleged communication and minor monetary transaction between the applicant and co-accused are insufficient to establish criminal liability, as no substantial financial exchange was unearthed. He also challenged the purported association between the applicant and one Tanz Ansari, terming it a conjecture devised by police to bolster its case. The arrest of the applicant was effected from an area near Siki Motorway, Lahore, on 05.03.2023, was also contested, with reference to a complaint lodged by the applicant's mother before the Commission of Inquiry on Enforced Disappearances. It was further argued that the CDR of the applicant does not place him at or near the scene of crime on the day of occurrence. On these grounds, the applicant sought admission to bail.

4. Conversely, learned DPG opposed the application, contending that although the FIR initially mentioned unknown persons, subsequent investigation revealed the applicant's involvement. It was submitted that the accused Arsalan was arrested on the basis of CDR analysis, which reflected communication with the deceased via a SIM card (No. 0307-2596251), registered in the name of one Waseem. The said Waseem, in his statement under Section 161 Cr.P.C., stated that the SIM was handed over to Mst. Bustan, his brother's former wife, who in her statement under Section 164 Cr.P.C., deposed that she provided the said SIM to applicant Arsalan. Prosecution further relied on the CDR data and inter se monetary transactions between the applicant and co-accused as corroborative of the applicant's role. It was also submitted that the applicant led to the place of incident where he had done rucky. As per the challan, the applicant allegedly instigated and facilitated the commission of murder, falling within the purview of Section 109 PPC. It was asserted that the applicant financed the co-accused, arranged for the murder weapon, orchestrated surveillance of the deceased. Regarding the

complaint filed by the applicant's mother alleging illegal detention, the learned DPG contended that it is now common place for accused persons to lodge such complaints in order to fabricate a plea of false implication. He maintained that the veracity of such assertions can only be determined during trial. As to the CDR relied upon by the defence, it was submitted that its evidentiary value cannot be conclusively determined at the bail stage. It was further argued that no mala fide or ulterior motive on part of the police or complainant has been established to justify bail. Given the nature of allegations, which attract capital punishment and fall within the prohibitory clause, the learned DPG sought dismissal of the bail application.

5. It is an admitted position that the name of the present applicant does not find mention in the FIR. However, such non-nomination, in the circumstances of the case, appears to strengthen the prosecution's version rather than weaken it, as the complainant had no prior enmity with the applicant or any other accused persons which might suggest a motive for false implication. Therefore, the failure to name the accused at the initial stage seems natural and does not, by itself, cast doubt on the veracity of the complaint.

6. The contention of learned counsel for the applicant regarding delay in lodging the FIR also does not, in this context, adversely affect the prosecution's case, particularly in the absence of any suggestion of ill-will or malice on the part of the complainant. Reliance in this regard is placed upon the judgments in the cases of *Muhammad Ajaib Vs. Mehboob Khan* (2000 P.Cr.L.J 1484), *Haq Nawaz Vs. The State* (2008 P.Cr.L.J 484), *Mian Muhammad Nawaz Sharif Vs. The State* (PLD 2002 Karachi 152) & *Sher Khan Vs. The State* (1996 P.Cr.L.J 668).

7. Moving ahead, during investigation, I.O fetched the CDR data, which eventually led to the arrest of the applicant during the investigation. The chain of events, as disclosed through statements recorded under Sections 161 and 164 Cr.P.C., links the applicant to the SIM through which contact with the deceased was made prior to the

incident, which prima facie lend credence to the prosecution's case. The prosecution alleges that the applicant conducted reconnaissance (raky) and received sums from co-accused Muhammad Ali Afridi. These allegations, supported by CDR analysis and money trail, are sufficient at this stage to attract the application of Section 109 PPC read with the substantive offence. As regards the complaint by the applicant's mother before the Commission on Enforced Disappearances, the matter remains to be established through evidence. Mere lodging of such application does not *ipso facto* discredit the investigative process. Likewise, the CDR relied upon by the applicant's counsel would require formal proof and scrutiny during trial and cannot be determinative at the bail stage. The principle that a deeper appreciation of evidence is impermissible at this stage is well settled.

8. Contention of the learned advocate for applicant that no identification test parade has been held, is untenable, because the police file shows that both the complainant and P.W Mst.Bistan identified the accused by describing the distinct role. Complainant identified present applicant by describing his role as the delivery boy who took one parcel and stated that such parcel is in the name of Khalid Raza (Deceased) and sent by one Ali Raza. At that moment, deceased was at Rawalpindi and he denied to know said Ali Raza, while on his insists, such parcel was received but not used by Khalid Raza. Moreover, P.W Bistan in her identification test parade memo categorically stated that accused/suspect Arsalan is the same person who came to receive the Sim card from her.

9. The applicant has not demonstrated any enmity, animosity, or mala fide on the part of the complainant or police to justify a presumption of false implication. The offence alleged is of a heinous nature, carrying capital punishment and falling within the prohibitory clause of Section 497(1) Cr.P.C. In such circumstances, bail cannot be granted as a matter of routine.

10. In view of the foregoing, I am of the considered opinion that prima facie sufficient material exists connecting the applicant with the

commission of the alleged offence, warranting denial of bail at this stage. Accordingly, the bail application stands dismissed. However, the learned trial court is directed to conclude the trial preferably within 03 months (90 days). Needless to say that the above assessments are tentative in nature and shall not effect the merits of trial.

J U D G E