

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
 Crl. Bail Application No. S-245 of 2025
 (Muhib Ali Ujjan Vs. The State)

Date	Order with signature of Judge
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- 1. For Orders on office objection.
- 2. For hearing of bail application.

ORDER.
 10-04-2025.

Mr. Zulfiqar Ali Bhutto, advocate for the applicant.
 Mr. Shakeel Ahmed Ansari, Advocate files power on behalf of complainant, which is taken on record.
 Syed Sardar Ali Shah Rizvi, Additional P.G for the State.

Ali Haider 'Ada',J:- Through this application, applicant/accused Muhib Ali Ujjan son of Mushtaque @ Ghulam Mustafa by case Ujjan seeks post arrest bail in Crime No. 97/2024 for offence punishable u/s 395 PPC registered at Police Station Kotdiji, District Khairpur.

2. Brief facts of the prosecution case are that complainant Abdul Jabbar lodged the FIR on 01-07-2024 alleging therein that on the night of 27-06-2024, when complainant and his other house inmates were sleeping, they woke up on a commotion and saw that accused Muhib Ali armed with repeater, Bagan with Kalashnikov, Shahbaz Dino alias Dhaloo with pistol, Mushtaque with gun all by caste Ujjan and two unidentified person armed with pistols were standing inside the courtyard of the house and then entered inside the house and committed theft of 6 Tola gold, cash amount of Rs. 5 lacs, one 12-bore SBBL licensed gun, 03 live cartridges of 12 bore, one LCD, ATM Card and then went away. At morning the complainant party approached the accused persons, who kept them on hollow hopes, ultimately they refused to return back the theft articles, hence complainant appeared at Police Station and lodged the above said FIR.

3. Learned counsel for the applicant contends that there is an unexplained delay of four days in the registration of the FIR, which casts serious doubt upon the veracity of the prosecution story. He further

submits that the applicant was allegedly shown to be arrested on 31-07-2024, however, in reality; he was illegally detained by the police on 29-06-2024 and remained in custody without lawful authority. In support of this assertion, he draws the attention of this Court to the fact that an application under Section 491 Cr.P.C was filed on 22-07-2024, seeking recovery of the applicant from illegal detention. It is contended that only after initiation of proceedings under Section 491 Cr.P.C., the police formally shown the arrest on record as dated 31-07-2024, in order to justify the prior illegal confinement and to give it a cloak of legality. He also draws the attention of this Court to Annexure "E" at page 39, whereby a co-accused, namely Mustaque @ Ghulam Mustafa, was granted post-arrest bail by this Court, despite alleged recovery affected from him. It is further submitted that another co-accused, namely Shahbaz Dino @ Dholo, was also granted post-arrest bail by the learned Trial Court, despite the recovery of alleged stolen gold rings from his possession. The applicant is said to have a similar role and the recovery of the alleged stolen gun from him, if any, is a matter to be determined during trial. Lastly, learned counsel prays for the grant of post-arrest bail to the applicant.

4. On the other hand, the Learned Deputy Prosecutor General, as well as the Learned Counsel for the Complainant have opposed the grant of bail and submitted that the recovery of the stolen licensed gun was affected from the present applicant, thereby directly connecting him with the commission of the alleged offence. It is contended that the applicant has been nominated in the FIR; they further distinguished the case of the co-accused who have been granted bail, submitting that their roles were materially different in nature. During the course of arguments, the Learned Counsel for the Complainant has also placed on record a photocopy of the license of the recovered gun, to substantiate that the weapon in question is a licensed one and was in unlawful possession of the applicant. In view of the above, both the Learned Counsel have prayed for dismissal of the instant bail application.

5. Upon tentative assessment of the available record, it appears that the applicant has made out a case for the concession of post-arrest bail, as his case falls within the ambit of further inquiry in terms of Section 497(2) Cr.P.C. Firstly, the unexplained delay of four days in the lodging of the

FIR, despite the fact that the accused persons including the applicant, were specifically nominated by name in the said report. Such delay, without satisfactory justification casts serious doubt. I am supported on the point of delay in the registration of FIR by the verdict of the Honourable Supreme Court in case of *Mazhar Ali v. The State* (2025 SCMR 318).

6. Secondly, it is also a matter of record that an application for habeas corpus under Section 491 Cr.P.C. was filed by a relative of the applicant well before the arrest of applicant. In the said application, it was categorically alleged that the applicant had been illegally detained by the police in the instant FIR, but despite notice, the police did not produce him before the Court. This circumstance raises a serious apprehension regarding the legality of the arrest of applicant, particularly when the recovery was allegedly shown to have been effected during arrest.

7. Thirdly, the recovery in the instant case pertains to a licensed gun, which, upon perusal of the record, is found in the name of one Karim Dino, the father of the complainant. During the proceedings, this Court specifically queried the learned Deputy Prosecutor General as to whether the said Karim Dino, being the licensed holder of the gun, had recorded his statement with the police. In response, it was conceded that neither the police file nor the case diaries reflect any such statement having been recorded. Furthermore, when the complainant, who was present in Court, was asked to explain the absence of his father's statement, he replied that his father is too old and infirm and not in a position to visit the police station or give a statement. He further stated that his father resides with him and the place of occurrence is their shared residence. This explanation raises serious doubts about the actual possession and usage of the licensed gun. It is rather surprising and questionable that a weapon remains in possession of a person who is admittedly incapable of mobility and it further leads to a presumption that the weapon may have been in use by other individuals, possibly including the complainant himself or his family members. The failure to follow due legal process in this regard and the lack of statement from the actual license-holder, raises significant doubts and appears to weigh in favor of the applicant. In support, reliance is placed on the case of *Mian Munfar Ali v. The State reported in 1999 P.Cr.L.J 369*, as bail was granted in the said case, wherein it was held

that “... Strangely, the statement of all the three material witnesses have not been recorded even u/s 161 Cr.PC by the Investigation Officer. This indeed quite objectionable and is extremely unreasonable. In fact it is not understandable at all.”

8. Fourthly, it is an admitted position that the recovery of alleged articles was also affected from the possession of co-accused, who has already been enlarged on bail and are presently enjoying their liberty. It is a well-recognized principle of criminal jurisprudence that “bail is a rule and jail is an exception”. When co-accused, assigned similar or even graver roles, have been granted the concession of post-arrest bail, the case of the present applicant calls for parity and similar treatment under the law, particularly when the recovery attributed to him is also subject to further inquiry. The rule of consistency and the right to fair treatment mandates that the applicant should not be discriminated against without lawful justification. Reliance is placed on the principle of rule of consistency, as enunciated by the Honourable Supreme Court of Pakistan in the case of *Zeeshan v. The State* (2024 SCMR 1716).

9. Finally, for what has been stated above, I am of the considered view that applicant/accused Muhib Ali S/o Mustaque @ Gulam Mustufa seem to has made out a case for the grant of post-arrest bail. Consequently, the applicant Muhib Ali S/o Mustaque @ Gulam Mustufa shall be released forthwith subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees One lac) and PR bond in the like amount to the satisfaction of learned trial Court.

10. Needless to mention here that observation made herein above are tentative in nature and trial Court may not be influenced of the same in any manner and shall decide the case on its own merits as per evidence and the material ought to be made available before it.

J U D G E