

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 741 of 2025

Applicant : Anas Khan son of Muhammad Siddique
Through Mr. Muhammad Hasnain Raza, advocate

Respondent : The State
through Ms. Rubina Qadir, DPG

Date of hearing : 14.04.2025

Date of order : 17.04.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicant Anas Khan seeks post-arrest bail in a case bearing crime No. 51/2025, offence u/s 395 PPC of P.S Surjani Town Karachi. Bail of applicant was declined by the Court of Learned XIth Additional Sessions Judge Central Karachi.

2. According to the contents of the FIR, the complainant alleged that certain unknown individuals entered the premises with the intent to commit dacoity. During the incident, it is stated that cash, gold ornaments, and a mobile phone were snatched. However, the applicant was subsequently arrested empty-handed, with no incriminating material recovered from his person or at his instance. The culprits who allegedly committed the robbery had already fled from the scene, and no attribution of overt act was specifically made against the present accused in the FIR.

3. Learned counsel contends, the arrest of the applicant was affected without any sort of recovery, and he was apprehended empty-handed, which casts serious doubt on his alleged involvement in the commission of the offence. It is rather implausible that individuals intent on committing dacoity would be without arms or tools for the said purpose. It was further argued that no CDR or other digital or corroborative evidence was collected by the Investigating Officer to connect the applicant with the alleged incident. There is also no evidence of prior criminal antecedents of the applicant. The complainant's own narrative reveals that the actual offenders fled the spot after committing the crime, and the applicant is not identified as one of those who actually committed the offence. Learned counsel submitted that the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C. and thus, the case requires further inquiry as contemplated under sub-section (2) of Section 497 Cr.P.C. Reliance was placed on the judgment reported as 2017 SCMR

733, wherein the Hon'ble Supreme Court held that where the case calls for further inquiry and does not fall under the prohibitory clause, grant of bail becomes a rule rather than an exception.

4. Learned APG vehemently opposed the grant of post-arrest bail to the applicant. He contended that the offence with which the applicant stands charged falls within the ambit of Section 395 PPC, which is not only a cognizable and non-bailable offence but also carries a severe punishment, thereby attracting the bar contained under Section 497(1) Cr.P.C. It was argued that the offence of dacoity is one of serious nature and creates a sense of insecurity and fear in society. Although the applicant was allegedly apprehended empty-handed, the law does not require that each member of an unlawful assembly in a case of dacoity must individually possess stolen property or weapons at the time of arrest. Mere presence and participation in the commission of the offence is sufficient to attract liability under Section 395 PPC. The learned APG further submitted that the case is at an initial stage and allowing bail at this juncture may adversely affect the ongoing investigation. He emphasized that deeper appreciation of evidence is not required at the bail stage, and tentative assessment of available material connects the applicant with the offence.

5. Record reflects, the applicant was allegedly arrested on spot, but neither any recovery of either stolen property or weapon has been effected from him. It is unusual and highly improbable that a person intending to commit dacoity would be unarmed or empty-handed and guarding the other intruders who allegedly went inside the house. It is also unusual that intruders run away from the spot while the person guarding them had been caught hold by the public. The culprits who allegedly snatched valuables fled the scene, and the present applicant is not identified as the main perpetrator. Furthermore, the Investigating Officer failed to collect any CDR or other material evidence to connect the applicant with the commission of the offence or establish his presence at the scene. The lack of criminal history, coupled with absence of any direct evidence and the non-prohibitory nature of the alleged offence, brings the case within the ambit of further inquiry as envisaged under Section 497(2) Cr.P.C. The principle laid down by the Hon'ble Supreme Court in 2017 SCMR 733 is fully attracted to the facts of the present case.

7. Accordingly, the applicant is admitted to post-arrest bail, subject to furnishing a solvent surety in the sum of Rs. 100,000/- (Rupees One Lac)

and PR bond in the like amount, to the satisfaction of the learned trial Court.

8. Needless to mention, the above observations are tentative in nature and shall not prejudice the case of either party during the trial.

J U D G E