

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1094 of 2025

Applicant : Ghamshad son of Zehri Rind,
Through Mr. Ahmed Hussain Jokhio, Advocate

Respondent : The State
Through Mr. Qamaruddin, Asstt. P.G Sindh.

Date of hearing : 16.05.2025

Date of order : 19.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicant Ghamshad seeks post-arrest bail in a case bearing crime No. 40/2025 registered at Police Station Gharo, District Thatta, offence under Sections 392, 397, and 337-H(ii) PPC. Previously bail of accused was declined by the court of learned Additional Sessions Judge-I Thatta vide order dated 05.04.2025.

2. As per the contents of the FIR lodged on 13.03.2025 by complainant Abdul Ghani Thaheem, his nephew Azhar Thaheem was allegedly robbed on 11.03.2025 near Taufeeq Hotel while on his way to Gharo on a red CD-70 motorcycle (AFR, model 2025), carrying Rs.50,000/- for business purchases. Three unidentified individuals riding a red 125 motorcycle, two of whom were armed, allegedly intercepted him. One of them performed aerial firing, pointed a pistol, and forcibly deprived him of the motorcycle and Rs.50,000/-. The complainant claimed that on making inquiries, he came to know "secretly" that the accused Ghamshad along with co-accused Zahoor and an unknown person were involved in the incident. FIR was registered with a delay of two days after consultation with local elders (Nekmards).

3. Learned counsel contended that the applicant is innocent and has been falsely implicated due to enmity. The FIR was lodged with an unexplained delay of two days, although the police station is merely 2/3 km from the place of occurrence. The complainant is not an eyewitness to the occurrence and the entire narrative is based on hearsay and conjecture. No source of information is mentioned to justify the implication

of the present applicant. The role assigned is vague; no specific overt act has been attributed to the applicant. The alleged robbery occurred in a public place at 7:00 p.m.; the question arises how the accused, well-known to the complainant's family, could commit such an act with open faces in a populated area, which defies common sense. There is no recovery from the applicant, nor has the robbed motorcycle or cash been traced. The case requires further inquiry within the meaning of Section 497(2) Cr.P.C. The offences under Sections 392 and 337-H(ii) PPC do not fall within the prohibitory clause of Section 497(1) Cr.P.C. The applicant is in judicial custody and no more required for investigation; prolonged incarceration serves no useful purpose. The applicant is a local resident and there is no ikelihood of his absconding or tampering with prosecution evidence. Reliance was placed on 2005 P.Cr.L.J 89 and 1996 P.Cr.L.J 740, wherein the principles of bail in further inquiry and presumption of innocence were reiterated.

4. Learned APG opposed the bail application on the grounds that the applicant is nominated in the FIR with specific allegation of armed robbery. The offence under Section 397 PPC is punishable with rigorous imprisonment not less than 07 years, and carries a presumption against bail. Robbery was allegedly committed by armed accused with aerial firing, which creates terror and panic among the public. The delay in lodging the FIR is explained by the complainant as due to consultation with community elders. Mere absence of recovery is not fatal at this stage when sufficient incriminating material is available on record. Bail in such offences is to be declined in view of the gravity and nature of allegations. The case does not fall within the ambit of further inquiry.

5. A bare reading of FIR reveals, the complainant was not an eyewitness to the occurrence and the entire story is based on hearsay, allegedly received "secretly" from unspecified sources. No plausible explanation is offered as to why this "secret information" surfaced two days later. Such uncorroborated and vague implication of the applicant, without recovery or any independent evidence, casts doubt upon the prosecution version. It is also notable that the applicant has not been assigned distinct or specific role in the alleged incident, nor has he been identified through any identification parade. The delay of two days in lodging the FIR, despite the proximity of the police station, remains unexplained in practical terms, especially for a serious offence like armed

robbery. Section 397 PPC, carries punishment not less than 07 years, does not fall within the prohibitory clause per se. It is now a settled principle of law, as enunciated by the Hon'ble Supreme Court in *Muhammad Tanveer v. The State* (2017 SCMR 733), that in cases where the offence does not fall within the prohibitory clause, the grant of bail is a rule and its refusal an exception, which must be justified by extraordinary or exceptional circumstances. The applicant is in judicial custody, investigation appears to be complete, and no recovery is attributed to him.

6 The case against the applicant thus calls for further inquiry within the meaning of Section 497(2) Cr.P.C. At this stage, deeper appreciation of evidence is not permissible. The courts are not to deprive liberty of an accused on mere allegations, especially where there is room for doubt and the role is neither specific nor supported by recovery or direct evidence.

7. Accordingly, the applicant Ghamshad is admitted to post-arrest bail subject to furnishing a solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand Only) and PR bond in the like amount to the satisfaction of the learned trial Court. The observations made herein are tentative in nature and shall not prejudice the trial court in deciding the matter on merits.

JUDGE