

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.953 of 2025

Applicant : Yasir son of Ghulam Sarwar,
through Mr. Hafiz Muhammad Khan Panhwer,
Advocate.

Respondent : The State
through Ms. Rahat Ahsan, Addl. P.G Sindh

Date of hearing : 19.05.2025.

Date of order : 23.05.2025.

ORDER

KHALID HUSSAIN SHAHANI, J.- Applicant Yasir seeks post-arrest bail in a case bearing crime No.168/2025 registered at P.S. KIA, Karachi, offence under Sections 397/34 PPC. His earlier bail plea was declined by the learned XIV Additional Sessions Judge, Karachi East, vide order dated 28.03.2025.

2. Per contents of the FIR, the complainant Asghar Ali reported that on 02.02.2025 at about 0815 hours, two unknown armed persons entered his house bearing No.604, Street No.3, Sector 8-E, Gulzar Colony, and on gunpoint robbed cash of Rs.1,000,000/-, four tola gold ornaments, and two mobile phones. At the time of the incident, the complainant was not present and was informed by his brother and wife regarding the dacoity. Consequent upon; case was registered inter-alia on above facts.

3. Learned counsel contended that the applicant is innocent and has been falsely implicated due to malafide intentions on the part of the police. It was argued that the FIR was registered on 02.02.2025 at 1810 hours against four unknown accused with muffled faces, which fact alone casts serious doubt as to how Mst. Shazia allegedly identified the applicant at the police station shortly thereafter. He further submitted that there was no prior information or any clue available to the police at the time of FIR regarding the identity of the culprits, yet astonishingly the applicant was shown arrested under Section 54 Cr.P.C. within a few hours of the alleged offence, without credible basis or independent witness. It was also emphasized that no identification parade was held before a Magistrate, which is a fatal flaw, especially when the FIR narrates that the assailants

had covered faces. Counsel pointed out that there is no recovery of any article bearing specific identification; no IMEI number of the allegedly stolen mobile phones has been provided; no CDR or SIM card data has been obtained to connect the accused with the incident; and no evidence exists to corroborate the claim of recovery from the applicant. The alleged recovery of gold tops and cash was effected after a delay of six days and the property allegedly recovered was not identifiable as belonging to the complainant. Furthermore, it was highlighted that the complainant and the accused are residents of the same locality i.e. House No.604 and House No. 608 respectively and was known to each other, thereby not mentioning his name in the FIR casts serious doubt regarding subsequent identification. It was also submitted that the applicant is a first offender with no criminal record and is in custody since his arrest; the investigation is complete and challan has been submitted, thus his continued incarceration is not justified. Learned counsel placed reliance upon the following case law in support of the bail plea:

- *1995 SCMR 34* – identification of accused in absence of proper identification parade held to be doubtful;
- *1997 SCMR 412* – emphasis on judicial identification test when FIR names unknown accused;
- *2002 SBLR 500* – bail granted in absence of specific attribution of role and defective identification;
- *2022 SCMR 1304* – held that mere recovery without credible connection to accused is not sufficient to deny bail.

4. Conversely, the learned APG opposed the grant of bail on the pretext that the offence is serious in nature and falls under Section 397 PPC, which carries a minimum sentence of seven years. He contended that the applicant was identified by one of the witnesses, Mst. Shazia, and certain recoveries were shown to have been made from his possession. He further submitted that the applicant's proximity of residence to the complainant's house is not sufficient to grant him bail and the matter requires trial for proper adjudication. However, he could not satisfactorily explain the absence of an identification parade, the lack of independent witnesses, and non-recovery of verifiable items such as CDRs, IMEI numbers or receipts of stolen property.

5. The record reflects that the FIR was registered on 02.02.2025 at 1810 hours against four unknown accused persons with muffled faces. Yet, surprisingly, one of the accused, the present applicant, was shown arrested at 0300 hours (midnight of the same day), under Section 54 Cr.P.C., without any prior leads, description, or identification by name or features. No identification parade was conducted before the learned Magistrate, which was necessary in view of the muffled description of the accused given in the FIR. The alleged identification by Mst. Shazia at the police station, in the absence of a proper judicial identification test, is inadmissible and carries no legal value.

6. Moreover, the recovery allegedly effected is not supported by any specific details, neither IMEI numbers of the stolen phones, nor serial numbers of currency notes, nor receipts of gold ornaments have been placed on record. No CDRs or SIM data were obtained to corroborate presence or communication between co-accused. Even the memo of recovery was prepared after an unjustified delay of six days, further casting doubt on the veracity of the alleged recovery. No independent private witness was associated with the recovery proceedings, despite the incident having occurred in a densely populated residential locality.

7. It is also noted that the complainant and the applicant reside in the same street, and the FIR indicates that the accused were masked, which renders the alleged identification extremely doubtful. No specific role has been assigned to the applicant in the FIR. He has no prior criminal record and the investigation is complete, with the challan already submitted. At bail stage, deeper appreciation of evidence is not warranted. Prima facie, the case against the applicant calls for further inquiry under Section 497(2) Cr.P.C. The offence, though punishable under Section 397 PPC, does not carry the death penalty or life imprisonment. As held by the Honourable Supreme Court in *2017 SCMR 733*, bail is the rule and refusal an exception in offences not falling under the prohibitory clause.

8. In view of the above discussion, the applicant has succeeded in making out a case for further inquiry. Consequently, this bail application is allowed. The applicant Yasir son of Ghulam Sarwar is admitted to bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees

One Lac only) and a P.R. bond in the like amount to the satisfaction of the learned trial Court.

9. Needless to mention, the observations made herein are tentative in nature and shall not prejudice the trial court in deciding the matter on merits.

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