

## IN THE HIGH COURT OF SINDH AT KARACHI

### Criminal Bail Application No. 1003/2025

Applicant : Zain son of Naeemuddin,  
Through M/S. Muhammad Ashraf Samoo &  
Ghulam Shabbir Babar, Advocates

Respondent : Mr. Rahat Ahsan, Addl. P.G. duly assisted by  
complainant present in person.

Date of hearing : 30.04.2025

Date of order : 30.04.2025

### **ORDER**

**KHALID HUSSAIN SHAHANI, J.** – Through the instant application, the applicant Zain seeks confirmation of interim pre-arrest bail granted earlier by this Court in Crime No. 156/2025, registered at P.S. Sukhan Malir, Karachi, under Sections 392, 397, 34 PPC. His earlier bail plea before the learned Additional Sessions Judge-VIII, Malir, Karachi, bearing Bail Application No. 1469/2025, was declined vide order dated 17.04.2025.

2. The brief allegations against the applicant, as narrated in the FIR, are that on 30.03.2025 at about 01:30 a.m., the complainant, along with Subhan and Arbaz, was en route to Bhains Colony when they were allegedly intercepted by two unknown motorcycle riders, who, at gunpoint, snatched cash amounting to Rs.240,000. It is alleged that one of the companions, Subhan, later identified the accused persons as Awais and Zain (applicant), who were both formerly employed at the complainant's slaughterhouse.

3. Learned counsel for the applicant contends that the FIR is the outcome of mala fide intention and ulterior motives rooted in a prior employment dispute. The applicant had ceased working with the complainant about two months prior to the occurrence, and due to such prior dealings, the applicant has been falsely implicated. It is further submitted that the FIR lacks details of the weapon allegedly used, the denominations of the cash amount, and any independent corroborative evidence. No specific description or circumstantial identification has been provided, raising serious doubt about the veracity of the allegations. It is emphasized that the occurrence took place at night (around 01:30 a.m.), and identification under such circumstances without any recovery or supporting evidence is inherently unreliable. Learned counsel also

submits that the complainant is a habitual litigant and has a track record of leveling false allegations, including a prior FIR (No. 901/2024) against another person in a seemingly manufactured dispute. The applicant also claims to have been present at another location (Ata Farm) from 12:00 p.m. to 2:30 a.m., thereby furnishing an alibi. No recovery has been effected from him and he has cooperated with the investigation throughout. He further argues that even the co-accused Awais, who was arrested, yielded no recovery, and the entire case rests upon oral assertions, necessitating further inquiry.

4. Conversely, learned Assistant Prosecutor General, Sindh, reluctantly, concedes that the prosecution case is based primarily on oral allegations without any recovery, arrest from the spot, or forensic linkage. The matter does not appear to fall within the prohibitory clause of Section 497 Cr.P.C.

5. The tentative assessment of the material on record reveals that the FIR was registered after alleged identification by one of the complainant's associates, but the incident took place in the late hours of night and in absence of any street lighting or independent eyewitness. Furthermore, there is no recovery of cash or any incriminating article from the possession of the present applicant. The applicant's implication appears to be based solely on suspicion, ostensibly stemming from his prior association with the complainant. The applicant has not misused the concession of interim bail and has remained available for investigation.

6. It is well settled that pre-arrest bail is not to be withheld merely as a punishment. In *Rana Muhammad Arshad v. Muhammad Rafique and another* (PLD 2009 SC 427), the Hon'ble Supreme Court emphasized that the purpose of granting pre-arrest bail is to protect innocent persons from humiliation, harassment, and arbitrary arrest at the hands of the police at the behest of complainants motivated by enmity or mala fide intent. The Court held that where malafide is apparent or reasonable grounds exist to believe that the applicant may be falsely implicated, pre-arrest bail may be granted even in non-bailable offences.

7. Moreover, in *2017 SCMR 733*, the Supreme Court reiterated that where an offence does not fall within the prohibitory clause of Section 497(1) Cr.P.C. and there is no likelihood of the accused absconding, tampering with evidence, or obstructing justice, the rule is bail and refusal is an exception. The Court has emphasized that in such cases, denial of

bail amounts to pre-trial punishment, which is contrary to settled principles of criminal jurisprudence.

8. In the present case, the offence under Section 397 PPC, though non-bailable, but minimum punishment provided for such an offence is not less than seven years and it is settled law that while deciding bail application, minimum punishment provided is taken into account; therefore, the case does not fall within the ambit of prohibitory clause of Section 497(1) Cr.P.C. The applicant has no prior criminal history, has joined investigation, and is not shown to have committed any overt act which would preclude consideration of bail at this stage.

9. In view of the above discussion, the absence of recovery, the circumstances of alleged identification, and the settled law enunciated (Supra), this case calls for further inquiry into the guilt of the accused in terms of Section 497(2) Cr.P.C.

10. Accordingly, the interim pre-arrest bail granted to the applicant vide order dated 18.04.2025 is hereby confirmed on the same terms and conditions. The applicant is, however, directed to cooperate with the investigating officer and attend the trial proceedings regularly. Any deviation or misuse of concession shall entail cancellation of bail.

**J U D G E**