

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Bail Application No. S-402 of 2024

Applicant : Sarfraz s/o Liaqat Ali Zangejo,
Through Mr. Habibullah G. Ghouri, Advocate

Complainant : Abdul Qadir
Through Mr. Muhammad Afzal Jagirani,
Advocate

Respondent : The State
Through Mr. Nazeer Ahmed Bhangwar, DPG for
the State

Date of hearing : 10.07.2025

Date of order : 10.07.2025

ORDER

KHALID HUSSAIN SHAHANI, J.— The applicant, Sarfraz Zangejo, seeks post-arrest bail in a case bearing Crime No. 22 of 2024, registered at Police Station K.N. Shah, for offences punishable under Sections 302, 397, and 34 of the Pakistan Penal Code (PPC). The applicant's previous bail application was declined by the court of the learned Additional Sessions Judge-I/MCTC Dadu, vide order dated June 29, 2024.

2. The FIR outlines an incident on January 14, 2024, where the complainant, Abdul Qadir, along with his nephews, was allegedly intercepted by three unknown armed assailants near Piyala Hotel while returning to their village. The assailants purportedly robbed them of their motorcycle at gunpoint. Upon resistance, the accused persons reportedly opened fire, injuring Sadam Hussain and Kamran. Tragically, Sadam Hussain later succumbed to his injuries at the hospital. The FIR was registered on January 17, 2024, indicating a delay of three days.

3. Learned counsel for the applicant has contended that the applicant has been falsely implicated due to ulterior motives, asserting a lack of direct evidence to connect him with the alleged offence. The counsel highlighted the delay in lodging the FIR and the absence of any identifying particulars or physical description of the assailants therein. It was further submitted that the applicant was arrested on March 11, 2024, in Crime No. 50/2024, of Police Station K.N. Shah, and subsequently implicated in the present case solely on the basis of a "further statement" dated March 13, 2024, which, critically, fails to disclose the source of information. Moreover, no identification parade was conducted, and the request for such a parade was reportedly declined by the concerned Magistrate on the pretext that the applicant's name had already been disclosed in the statements of the witnesses. Learned counsel additionally maintained that the only evidence ostensibly connecting the applicant to the crime is the alleged recovery of a pistol in a separate case (Crime No. 51/2024 under Section 23(1)(a) of the Sindh Arms Act, 2013), which the prosecution claims matched the empty shells collected from the crime scene. However, it was argued that such ballistic analysis, initiated post-recovery, lacks foundational evidentiary value, particularly given the doubtful linkage of the applicant with the alleged crime scene.

4. Conversely, learned Deputy Prosecutor General, assisted by learned counsel for the complainant, vehemently opposed the grant of bail. They contended that the applicant was nominated by the complainant and eyewitnesses in their subsequent statements, asserting that no animosity has been alleged against them to suggest false implication. Furthermore, they argued that the matching of the empties with the weapon recovered from the applicant provides strong circumstantial evidence linking him to the offence.

5. It is admitted that the incident occurred at night and the FIR does not mention any descriptive particulars (hulia) of the unknown assailants. Furthermore, the delay of three days in lodging of the FIR, without any satisfactory explanation, casts a shadow of doubt at this preliminary stage. This Court recalls the principle established in *Syed Saeed Muhammad Shah & others Vs the State* (1993 SCMR 550), which holds that statements recorded by the police after delay and without explanation are to be ruled out of consideration. This principle applies with equal force to the delay in reporting the incident itself.

6. The implication of the applicant through a further statement recorded about two months after the incident and subsequent to his arrest in another case without disclosing the source of such identification raises serious concerns regarding the genuineness of such nomination. This Court is mindful of the rulings in 2023 Y L R 1094 [Balochistan], MUHIBULLAH and others Versus The STATE and others, where it was deliberated that statements of eye-witnesses under Section 161, Cr.P.C. recorded with unexplained delay, particularly when accused were in custody, could be fatal to the prosecution's case.

7. Additionally, no test identification parade was held before any Magistrate, which substantially diminishes the credibility of the claim that the applicant was recognized by the witnesses. It is a well-established legal tenet that in the absence of a proper identification parade, a conviction cannot be safely based on such identification, particularly when the witnesses had no prior acquaintance with the accused. The reliance on belated Section 161 Cr.P.C. statements where witnesses fail to furnish physical or facial features/characteristics of the accused, as emphasized in MUHIBULLAH and others Versus The STATE and others (2023 Y L R 1094), further weakens the prosecution's case at this juncture. The lack of an

identification parade in this case, coupled with the absence of descriptive particulars in the FIR, suggests that the identification of the applicant for the first time in court would hold minimal probative value.

8. With regard to the recovery of the pistol and its forensic matching, the fact that the weapon was recovered after a lapse of considerable time and in a separate FIR diminishes its probative value. The question as to whether the alleged recovery is genuine and whether it links the applicant to the occurrence will be determined after recording of evidence at trial. The case of MUHIBULLAH and others Versus The STATE and others (2023 Y L R 1094) also highlighted that unexplained delays in sending exhibits (pistol and empty shells) for forensic analysis significantly undermine the evidentiary value of such recoveries, a point directly relevant to the circumstances herein. At this stage, the prosecution's case is primarily based on circumstantial and hearsay evidence, which, under Articles 38 & 39 of the Qanun-e-Shahadat Order, 1984, carries minimal value for determining culpability at the bail stage.

9. The investigation in the case has been completed, challan has been submitted, and the applicant is no longer required for the purpose of investigation.

10. For the foregoing reasons, the prosecution's case against the applicant, at this preliminary stage, appears to be riddled with doubts, primarily stemming from the unexplained delay in lodging the FIR, the belated and uncorroborated "further statement" implicating the applicant, the absence of an identification parade, and the infirmities surrounding the alleged recovery of the weapon. These factors collectively bring the case within the ambit of further inquiry as contemplated under Section 497(2) of the Criminal Procedure Code (Cr.P.C.), which entitles the applicant to the concession of bail.

11. Therefore, the applicant Sarfraz Zangejo is admitted to post-arrest bail subject to his furnishing a solvent surety in the sum of Rs. 200,000/- (Rupees Two Hundred Thousand Only) and a personal recognizance bond in the like amount to the satisfaction of the learned trial Court.

12. Needless to observe, the findings made hereinabove are tentative in nature and shall have no bearing on the merits of the case at the trial stage.

J U D G E

Asghar Altaf/P.A