

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Bail Application No. S-362 of 2025

DATE OF HEARING

ORDER WITH SIGNATURE OF HON'BLE JUDGE

01. For orders on office objection "A"

02. For hearing of bail application.

15-08-2025

Mr. Ashfaq Hussain Abro, Advocate for the applicant
Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh
a/w SSP Sajid Ameer District Kamber Shahdadkot,
Inspector Imdad Ali Chandio, Insp. Zulfiqar Ali Legal
Branch and ASI Noor Nabi.

Ali Haider 'Ada'.J:- Through this application, the applicant seeks post-arrest bail in Crime No. 19 of 2025, registered under Sections 394, 397, and 34 PPC, at Police Station Drigh, Police Post Dost Ali. Prior to filing the present application, the applicant had moved a post-arrest bail application before the learned Sessions Judge, Kamber, who entrusted the same to the learned Additional Sessions Judge-II, Kamber. However, the said application was dismissed by the learned Additional Sessions Judge-II.

2. The brief facts of the prosecution case are that on 08.04.2025, the complainant lodged the FIR, stating that on 03.04.2025, while returning to his village on his motorcycle at about 09:00 PM, he was intercepted by three unknown persons with muffled faces, all of whom were armed. The two accused persons robbed him of his motorcycle and attempted to flee. During the course of the incident, the complainant managed to uncover the face of one of the accused and identified him as Naveed (the present applicant). It is further alleged that the applicant opened fire, which struck the complainant on his right calf. Thereafter, the said accused also fled from the scene. The FIR was lodged after the complainant received medical treatment.

3. Learned counsel for the applicant contends that there is an unexplained delay in the registration of the FIR, which casts doubt on the veracity of the prosecution's case. He further submits that, despite the complainant allegedly sustaining injuries, the relevant penal sections concerning the injuries were not mentioned in the FIR, which indicates a deliberate omission and mala fide on the part of the complainant. If the complainant was injured and received medical treatment, he could and should have informed the police immediately, allowing for prompt

medico-legal examination and proper documentation of the injury. Learned counsel further submits that during the course of investigation, the applicant was found innocent, and the investigating officer submitted such findings. Subsequently, the learned Magistrate passed an order for further investigation. In compliance with that order, an Inspector-level officer conducted further investigation and again opined the applicant to be innocent. However, the learned Magistrate disagreed with that report and did not discharge the applicant. It is further argued that the applicant is presently in custody and that the injury, as described, has been declared under Section 337-F(iii), PPC, which does not fall within the prohibitory clause of Section 497, Cr.P.C. In these circumstances, learned counsel prays for the grant of post-arrest bail to the applicant.

4. The complainant is present before the Court and has filed his statement, wherein he has expressed full faith and confidence upon the learned State Counsel. His statement is duly supported by an affidavit, accompanied by biometric verification.

5. On the other hand, the learned State Counsel opposes the grant of bail and submits that the ingredients of the offence of robbery are not fully attracted in the case of the present applicant, as such allegations require evidence to be established during trial. However, he argues that the injury aspect is clearly made out, and the applicant has been specifically attributed the role of causing such injury to the complainant. Therefore, in view of the specific allegation against the applicant, he is not entitled to the concession of bail at this stage.

6. Heard the arguments of learned counsel for the parties and perused the material available on the record with due care and caution.

7. As far as the applicability of Sections 394 and 397, PPC is concerned, the attraction of these provisions to the case of the present applicant requires deeper appreciation of evidence, which can only be done at the time of trial. The complainant himself has admitted that the act of robbery, including the snatching of his motorcycle, was committed by the co-accused, who subsequently fled from the scene. The role attributed to the present applicant is limited to the alleged infliction of injury, and not to the act of robbery itself. In these circumstances, the involvement of the applicant in the commission of robbery, as defined under Sections 394 and 397, PPC, is a matter that cannot be conclusively determined without recording of evidence. At this stage, without a full-

fledged trial, it would not be appropriate to draw a definitive conclusion regarding the applicability of these sections to the applicant.

8. Perusal of the medical certificate issued by the Medical Officer reflects that the complainant approached the hospital on the day of the alleged incident, i.e., 03.04.2025, and presented Medical Letter No. 456 dated 03.04.2025, which was issued by the concerned police station. This clearly indicates that the complainant had already contacted the police on the day of the incident for the issuance of the medical letter. However, despite this, the FIR was not lodged until 08.04.2025 after an unexplained delay of four days. This delay, in the absence of any plausible explanation, raises serious doubts about the genuineness of the complainant's version and suggests the possibility of deliberation and consultation before lodging the FIR. In support of this view, reliance is placed on the cases of *Mazhar Ali v. The State* (2025 SCMR 318) and *Nawab Khan Kalhoro v. The State* (2025 YLR 981).

9. Another important aspect of the case is that the accused was declared innocent in two successive investigations. This finding is corroborated by the statements of independent witnesses recorded during the course of investigation. In the absence of any other eye-witnesses apart from the complainant, there appears to be no cogent reason to disregard the statements of those independent witnesses, particularly when their accounts support the claim of innocence of the present applicant. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of *Zaigham Ashraf v. The State and others* (2016 SCMR 18). Further reliance is placed on the case of *Sharif Khan v. The State and another* (2021 SCMR 87), wherein the Hon'ble Apex Court observed that:

The Investigating Officer in order to verify the plea raised by the petitioner, investigated the matter at length and finally came to the conclusion that the petitioner was not present at the spot at the time of occurrence. As a consequent, he was declared innocent while placing his name in the column No.02 of the report under section 173, Cr.P.C.

10. As regards the injury allegedly sustained by the complainant at the hands of the applicant/accused, the medical report furnished by the Medical Officer reflects that no fracture or grievous injury was found. The injury has been categorized as *Ghair-Jaifah Mutallahimah*, falling under Section 337-F(iii) PPC. The punishment prescribed for this offence is imprisonment for a term not exceeding three years, which does not fall

within the prohibitory clause of Section 497, Cr.P.C. Therefore, considering the medical evidence on record, the injury allegedly inflicted upon the complainant does not attract the prohibitory clause, and thus the applicant is entitled to the benefit of bail on this count. In support of this position, reliance is placed on the judgments of this Court in the cases of *Wahid Khan and another v. The State* (2025 MLD 938) and *Lal Muhammad v. The State* (2025 YLR 769). Further, in the case of *Gul Muhammad v. The State* (2023 SCMR 857), the Hon'ble Supreme Court observed that:

According to Medico Legal Report of the injured PW Usman, the injuries on his person have been declared as ghayr jaifah mutalahimah and shajjah-i-khafifah falling within the ambit of sections 337-F(iii) and 337-A(i), P.P.C. for which the maximum punishment provided under the statute is three and two years respectively

11. As per the prosecution's case, the memo of the place of incident does not reflect that any crime empty was recovered during the visit to the scene. The absence of any recovery of crime empties from the place of occurrence raises doubts about the manner in which the incident allegedly took place. In this regard, reliance is placed upon the case of *Muhammad Saeed v. The State* (2025 SCMR 629). Moreover, no weapon has been recovered from the possession of the applicant/accused, despite his arrest on 10.04.2025. The failure of the police to effect any recovery, even after arrest, entitles the applicant to the benefit of bail. In support of this view, reliance is placed upon the judgments in the cases of *Zeeshan v. The State* (2024 SCMR 1716), *Saeed Yousaf v. The State and another* (2021 SCMR 1295), and *Sheraz v. The State* (2021 MLD 292).

12. In view of the foregoing reasons and discussion, the applicant has succeeded in making out a case for the grant of post-arrest bail. The material available on record suggests that the case against the applicant requires further inquiry within the meaning of Section 497(2), Cr.P.C, which entitles him to the concession of bail. Accordingly, the instant bail application is allowed. The applicant/accused is admitted to post-arrest bail in Crime No. 19 of 2025, registered at Police Station Drigh, Police Post Dost Ali, District Kamber, upon furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand only) and a personal (PR) bond in the like amount to the satisfaction of the learned trial Court. Needless to mention, the observations made herein are tentative in nature and shall not prejudice the case of either party. The learned trial Court shall decide

the matter strictly on the basis of evidence available on record and in accordance with law, without being influenced by any observation made in this order.

13. With regard to the previous proceedings, it is noted that in pursuance of this Court's order dated 08.08.2025, the Senior Superintendent of Police (SSP), Kamber @ Shahdadkot, is present in Court and has submitted a compliance report, along with a copy of the suspension order and show-cause notice issued to the concerned Station House Officer (SHO). It is pertinent to note that on 31.07.2025, this Court had passed an order observing that despite issuance of notice, the complainant remained absent. Accordingly, directions were issued for service of notice through the concerned SHO with specific directions that, in case of failure, the SHO himself shall appear before the Court. However, on the next date of hearing, i.e., 08.08.2025, the SHO failed to appear and no report or endorsement was submitted regarding compliance with the Court's order. Today, the SHO is also present before the Court and has tendered an unconditional apology, along with an explanation that he did not receive the notice in question. The SSP has assured the Court that appropriate measures will be taken to ensure compliance with future Court orders, including the development of a proper communication mechanism to inform subordinate police officers about judicial directives in a timely manner. In the given circumstances, the explanation offered by the SHO for his non-appearance is accepted, subject to a cautionary note that he must remain vigilant and responsive to Court directions in the future. As far as departmental proceedings are concerned, the same shall be concluded as per Law.

JUDGE