

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Bail Application No.S-370 of 2025

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Applicant	Ajeeb Shah @ Adeeb: through Mr. Ghulam Murtaza Soomro advocate
Complainant	Gul Sher: through Mr. Ghulam Rasool Mallah advocate
State	Through Mr. Ghulam Murtaza Mallah Assistant P.G
Date of hearing	21.08.2025
Date of Order	21.08.2025

ORDER

TASNEEM SULTANA, J.- This common order will decide the fate of both captioned bail application, which are interlinked with each other, wherein the applicant/accused Ajeeb Shah alias Adeeb seeks post-arrest bail in Crimes No.62 & 82 of 2024 both registered at Police Station Bhan Saeedabad under Sections 302, 397, 34, PPC and 25 of the Sindh Arms Act, 2013 respectively.

2. It is important to note here that this is second bail application on part of the applicant/accused in Crime No.62 of 2024 as earlier his first Bail Application bearing No.S-1330 of 2024 in the same crime had been dismissed as withdrawn by this Court vide Order dated 24.01.2025. However, this fact has been concealed by the learned counsel for the applicant.

3. The brief facts of the case, as gathered from the record, are that complainant Gulsher lodged FIR No. 62 of 2024 on 25.07.2024 at about 1400 hours, alleging that on 14.07.2024 at about 2:30 p.m., four unknown culprits intercepted his nephew Sikandar Ali at the Bhan Talti link road, War Wari Mori, near village Giddu Bagh. It is alleged that they deprived him of his motorcycle, and when he resisted, one of the accused fired at him with a pistol, causing a through-and-through injury near the left armpit, which resulted in his instantaneous death at the spot. On 04.10.2024 the present applicant/accused was arrested and during interrogation he allegedly led the police party to the recovery of an unlicensed pistol along with three live rounds, said to have been used in commission of aforesaid crime, and as such offshoot case bearing FIR No. 82 of 2024 was also registered against him under Sindh Arms Act, 2013.

4. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated due to mala fide intention on the part of the complainant, as the deceased himself was involved in personal enmity with his

close relatives; that the complainant was fully aware of the actual culprits but has chosen to involve the applicant in order to strengthen a weak case; that there is an unexplained delay of about eleven days in lodging the FIR despite the fact that the police station is located at a distance of only three to four kilometers from the place of occurrence; that such an inordinate delay, without any plausible explanation, casts a serious doubt upon the genuineness of the prosecution's case; that even from a bare reading of the FIR, no specific role has been assigned to the applicant nor has any overt act been attributed to him in the commission of the alleged offence; that the narration in the FIR is vague and in such circumstances the involvement of the applicant is at best doubtful; that no recovery was actually made from the applicant and the alleged weapon has been foisted upon him at the instigation of the complainant, rendering the entire case doubtful; that the applicant deserves the concession of bail as the prosecution has failed to bring on record sufficient material to connect him with the offence.

5. Conversely, learned Assistant Prosecutor General assisted by learned counsel for the complainant, contended that first bail application filed by the applicant in main case had already been dismissed as withdrawn by this Court and this is a second bail application in main crime without having any fresh ground, therefore, same is not maintainable under the law; that even the material available on record sufficiently connects the applicant with the commission of the alleged offence; that in supplementary statements recorded under Section 162 Cr.P.C. on 26.09.2024, the complainant as well as prosecution witness Ajeeb Ali Bughio specifically implicated the applicant by name; that on 03.10.2024, a test identification parade was conducted before the learned Judicial Magistrate-II, Sehwan, in which both the complainant and the said witness duly identified the applicant without any hesitation, which provides strong prima facie evidence against the applicant; that on 04.10.2024, while in police custody, the applicant led the police party towards recovery of the pistol along with three live rounds that was used in the commission of crime; that the identification parade and the supplementary statements, clearly establishes the applicant's involvement in the matter; that the offences with which the applicant stands charged fall within the prohibitory clause of Section 497 Cr.P.C, being punishable with death or imprisonment for life, therefore, the concession of bail cannot ordinarily be extended unless a case of further inquiry under Section 497(2) Cr.P.C. is made out; that in view of the above submissions the instant bail applications are not maintainable and liable to dismissal.

6. The first and foremost question before this Court is as to whether a second bail application in the same crime before the same Court without having any new and/or fresh ground is maintainable or otherwise.

7. In order to answer the aforesaid question I have taken guidance from the case of *Nazir Ahmed and another vs. The State and others* reported in PLD 2014 SC 241, wherein it has been settled by the Apex Court as follows:

- “(iii) *Dismissal of an application for bail after attending to the merits of the case amounted to rejection of all the grounds available or in existence till the time of such dismissal whether such grounds were actually taken or urged or not and whether such grounds were expressly dealt with in the order of dismissal or not.*
- (iv) *In case of dismissal of an earlier application for bail on the merits of the case a subsequent application for the same relief could be filed and entertained only if it was based upon a fresh ground, i.e. a ground which was not available or in existence at the time of decision of the earlier application.*
- (v) *Withdrawal simpliciter of an earlier application for bail before addressing or hearing of any argument on the merits of the case does not preclude filing of a subsequent application for the same relief before the same court and its decision by such court on the merits of the case. In all cases of withdrawal of such an application the court must faithfully record in its order as to whether withdrawal of the application had been requested and allowed after addressing and hearing of some or all the arguments on the merits of the case or withdrawal of the application had been requested and allowed before addressing and hearing of any argument on the merits of the case.*
- (vi) *In a case of withdrawal of an earlier application for bail after addressing and hearing of some or all the arguments on the merits of the case no subsequent application for the same relief could be filed before or entertained by the same court unless such subsequent application was based upon a fresh ground, i.e. a ground which was not available or in existence at the time of disposition of the earlier application.”*

8. The dicta reproduced above was subsequently endorsed by a five member Bench of the Apex Court in the case of *Muhammad Aslam vs. The State* reported in PLD 2015 SC 41. These settled principles make it clear that second bail application on similar grounds before same Court cannot be entertained even if the first one was withdrawn after making arguments at some length. I have gone through the earlier bail application of the applicant in juxtaposition of the grounds taken in one of the present bail application viz: Cr. Bail Application No.370 of 2025 and it appears that both these bail application are based on same grounds. The earlier bail application, as mentioned supra, was withdrawn by the counsel for the applicant after making arguments at some length. Therefore, in view of the above dicta it can be easily held that all the grounds, taken in present bail application, were considered and rejected by this Court earlier. Further, although in the order passed in earlier bail application, directions were issued to the trial Court for conclusion of the trial within six months, however, neither the ground of delay in conclusion of the trial on part of the prosecution, if any, has been taken in

this second bail application nor the second bail application even found mention about filing of first bail application. This conduct establishes the element of concealment of facts, which let alone, is sufficient for rejection of bail plea of the applicant.

9 Even coming to the merits of the case, it is correct that the incident occurred on 14.07.2024 while the FIR was registered on 25.07.2024, but such delay is generally a factor that may cast doubt on the prosecution's case, is not always fatal by itself. In the present case, the delay stands neutralized by subsequent developments in investigation, particularly the supplementary statements under Section 162 Cr.P.C., the test identification parade, and the recovery of the weapon. These factors provide independent connecting material which, at this stage, cannot be lightly brushed aside merely on account of delay in registration of the FIR.

10. Further the applicant was subjected to a test identification parade before the learned Magistrate on 03.10.2024 wherein both the complainant and the eye-witness identified him. While it is true that the probative value of identification parades is to be finally determined at trial, at the bail stage such identification constitutes prima facie material connecting the accused with the alleged offence, particularly where the culprits were initially unknown in the FIR. This identification, when considered together with the supplementary statements of the prosecution witnesses and the recovery of the pistol, strengthens the prosecution case at this stage.

11. So far as the offshoot recovery case is concerned, the mashirs Muneer Ahmed and Ahmed Khan have categorically deposed in their statements under Section 161 Cr.P.C. that the recovery of the weapon was effected on the pointation of the applicant. Such recovery, although subject to proof at trial, cannot at this stage be disregarded. However, the weapon is claimed to be the same used in the incident, and this piece of evidence, albeit tentative, forms a part of the circumstantial chain which prima facie connects the applicant with the crime.

12. The above discussion led me to hold that the applicant has failed to make out a case for concession of bail. Hence his bail applications were dismissed vide my short order dated 21.08.2025 and these are reasons thereof. However, it is clarified that the observations made herein are tentative in nature and shall not prejudice the trial Court in deciding the case on merits, which shall be determined independently on the basis of evidence brought before it.

J U D G E