

## **THE HIGH COURT OF SINDH AT KARACHI**

### **Criminal Bail Application No.2008 of 2025**

Applicant : Rizwanullah alias Babu son of  
Attaullah through Mr. Najam Nek  
Markhand, Advocate

### **Criminal Bail Application No.2042 of 2025**

Applicant : Jawad Ali @ Sheeraz Ali son of  
Khadim Hussain through Mr.  
Asadullah, Advocate

Complainant : Shahid Ali son of Sodal Khokhar,  
present in person

Respondent : The State, through Ms. Seema Zaidi,  
Additional Prosecutor General, Sindh

Date of Hearing : 27.10.2025

Date of Decision : 27.10.2025

### **ORDER**

**Jan Ali Junejo, J.-** By this common order, I propose to decide Criminal Bail Application No.2008 of 2025, filed by applicant Rizwanullah @ Babu, and Criminal Bail Application No.2042 of 2025, filed by applicant Jawad Ali @ Sheeraz Ali. Both applicants seek post-arrest bail in a case arising out of FIR No.212 of 2025 registered at Police Station Saeedabad, District Keamari, Karachi, for offences under Sections 302 and 34 PPC (as mentioned in the FIR), read with Sections 109, 118, 119, 201, and 221 PPC (added in the final challan/charge sheet). Their earlier applications for bail were dismissed by the learned Xth Additional Sessions Judge, Karachi West, vide order dated 05.06.2025 (in the case of applicant Rizwanullah) and Orders dated: 21.07.2025 (in the case of both applicants).

2. As per the statement recorded under Section 154 Cr.P.C. at Trauma Centre, Civil Hospital, Karachi, SIP Muhammad Azhar stated that on 27.04.2025 at about 07:15 hours, the complainant Shahid Ali reported that he had contracted court marriage with Mst. Ayesha on 13.02.2025. Her brothers, Ali Nawaz and Ghulam Qadir, and their uncle, Mumtaz, were displeased and had issued threats. On 27.04.2025, at about 03:00 a.m.,

the complainant, while sleeping with his wife on the roof of his house, found her dead with bleeding from a head injury. The body was shifted to Civil Hospital where she was declared dead. The complainant alleged that his wife's brothers and uncle had murdered her by firearm owing to their disapproval of the marriage. It is not in dispute that neither of the present applicants was nominated in the FIR. They came to be implicated subsequently during investigation on allegations broadly of facilitation/abetment, including alleged provision of a pistol to an unnamed principal, visiting the place of occurrence, and post-occurrence concealment acts, with further reference to Sections 109, 118, 119, 201, and 221 PPC. A weapon was allegedly recovered from a co-accused (not before this Court). The final challan has been submitted and accepted on 09.07.2025.

3. The learned counsel appearing for applicant Rizwanullah @ Babu (Crl. Bail Appln. No.2008/2025), that the CCTV footage relied upon by the prosecution does not depict the applicant or the commission of the alleged offence, and that any deeper appreciation of such material is impermissible at the bail stage. He further submits that the offences alleged under Sections 109, 119, 201 and 221 PPC, when seen in light of their minimum punishment and the circumstances of the case, do not attract the prohibitory clause of Section 497(1) Cr.P.C. He maintains that there is an unexplained delay of nearly five hours in lodging the FIR, and that mala fides are evident because the persons nominated by the complainant in the FIR were not sent up in challan, whereas the applicants, who were not named, have been arrayed without independent corroboration. He therefore prays for grant of bail to applicant Rizwanullah @ Babu.

4. The learned counsel appearing for applicant Jawad Ali @ Sheeraz Ali (Crl. Bail Appln. No.2042/2025), that the applicant is not nominated in the FIR, no specific role is attributed to him in the contemporaneous record, and no recovery has been effected from him. He submits that no ocular account connects the applicant with the occurrence, and that the only material relied upon by the prosecution comprises alleged statements/confessions made during police custody and a co-accused's disclosure, both inadmissible against a co-accused under Article 38 of the Qanun-e-Shahadat Order, 1984. He further asserts that investigation is complete and the applicant is no longer required for further probe, and therefore, the applicant is entitled to the concession of bail.

5. The learned Additional Prosecutor General, Sindh assisted by the complainant present in person, that the offence is heinous and entails capital punishment. She submits that the material collected during investigation, including medical evidence confirming firearm injury, the alleged recovery of a weapon from a co-accused, and statements recorded under Section 161 Cr.P.C., tentatively connects both applicants as facilitators. She maintains that no mala fide has been shown to demonstrate false implication and argues that release at this stage may enable tampering with evidence or pressurizing of witnesses. She therefore prays for dismissal of bail for both applicants, which request is also adopted by the complainant.

6. I have considered the submissions advanced by learned counsel for the Applicants, the Complainant appearing in person, as well as the learned A.P.G. for the State, and have examined the available record with their able assistance. At the bail stage, only a tentative assessment is permissible, while deeper appreciation of evidence is to be avoided. The complainant's FIR unequivocally nominated only the deceased's two brothers and her paternal uncle as the suspected perpetrators. The present Applicants were not named therein. Their subsequent implication rests primarily upon: (a) alleged disclosures/confessional statements made during police custody; (b) an alleged disclosure by a co-accused; (c) an asserted visit to the place of occurrence; and (d) recovery of a pistol from another co-accused, not from either Applicant. No eye-witness account of the incident is available, nor has any independent witness attributed any overt act to either Applicant at the time of occurrence.

7. It is settled law that a confession made to a police officer or while in police custody is inadmissible except to the extent of discovery under Article 40 of the Qanun-e-Shahadat, 1984 (corresponding to Section 27 of the Evidence Act) and even then, only the portion leading to discovery is admissible against its maker. An accused's statement cannot be used as substantive evidence against a co-accused; at best, it may lend support if there is independent corroboration. Reliance, inter alia, can be placed on the principle highlighted in Case of **Raja Muhammad Younus v. The State (2013 SCMR 669)**, among other precedents. In the present matter, the alleged weapon was not recovered from either of the applicants; the prosecution case ties them to facilitation allegedly by provision of weapon and presence. Absent independent corroboration connecting them to the *actus reus* or *mens rea* at the relevant time, such material, tentatively, does not inspire confidence for purposes of curtailing liberty at the post-arrest stage.

8. The prosecution's reliance on the CCTV footage is misplaced, as it has not been shown to depict either of the Applicants or the commission of the alleged offence. At the bail stage, where such footage neither identifies the Applicants nor captures the act in question, its evidentiary worth is tenuous and would require a deeper appreciation of evidence, which is impermissible at this stage. The CCTV footage, being evidence obtained through modern devices, is admissible and relevant under Article 164 of the Qanun-e-Shahadat Order, 1984. However, its admissibility and evidentiary value are matters to be determined by the learned trial Court, subject to the condition that all relevant material (including the CD, USB, or other storage device containing the footage) is duly provided to the Applicants and other accused persons under Section 265-C, Cr.P.C., considered at the time of framing charge under Section 265-D, Cr.P.C., and, if produced at trial, duly put to the accused in their statements under Section 342, Cr.P.C.

9. The main charge under Section 302 PPC attracts the prohibitory clause. However, where the applicants are not assigned the principal role of *Qatl-i-Amd* but are sought to be roped in for abetment/facilitation under Sections 109/34 PPC, or for post-occurrence concealment/misconduct under Sections 118, 119, 201, 221 PPC, the court must scrutinize whether the tentative material brings their case within the rigors of Section 497(1) Cr.P.C. on capital charge or whether, on the available record, their liability, if any, would pivot on non-prohibitory offences or be a case of further inquiry under Section 497(2) Cr.P.C. Given that: (i) there is no nomination in FIR; (ii) no recovery from either applicant; (iii) no independent ocular account; (iv) the alleged linkage stems from custodial statements/disclosures of co-accused; and (v) the medical evidence only confirms the death by firearm without identifying the assailant or any facilitator, the case against both applicants, even on facilitation, is doubtful at this stage and squarely falls within the ambit of further inquiry in terms of Section 497(2), Cr.P.C. In similar circumstances, in the case of ***Shahzada Qaiser Arfat alias Qaiser v. The State and another (PLD 2021 SC 708)***, the Honourable Supreme Court of Pakistan was pleased to grant bail to an accused attributed with the similar role of conspiracy/abetment, observing that: "The material available as to the alleged involvement of the present petitioner in hatching alleged conspiracy of committing murder of the deceased persons, so far as the FIR is concerned, is confined to mere allegation of conspiracy/abetment without disclosing any details of such conspiracy/abetment, such as place and time of the alleged conspiracy/abetment and names

of the persons who heard such conspiracy/abetment. However, later on the Police recorded statements of certain persons, under section 161, Cr.P.C. wherein they have stated that while passing through the Bazar outside the house of the accused persons in the night of 18 and 25 November, 2019, they overheard the accused persons say that they would take revenge of the murder of their brother from Shabbir Hussain. It is not the case of the prosecution that the petitioner was present at the spot or he caused any injury to any deceased or anybody else and in such circumstances there is no chance of any recovery at the instance of the petitioner if he is arrested. All the incriminating material against the petitioner is already with the prosecution. In the circumstances, we find it a fit case for exercise of discretion to admit the petitioner to pre-arrest bail to save him from unjustified arrest, consequent humiliation and the curtailment of his right to liberty. We, therefore, convert this petition into appeal and allow the same". The underlining is supplied.

10. The final challan has been submitted and accepted on 09.07.2025. The applicants are in judicial custody; no further physical remand is sought. The FIR appears to have been lodged within the same day; while there is a gap between the alleged time of occurrence (around 03:00 a.m.) and reporting (after five hours), the circumstances include removal of the injured/deceased to hospital. Be that as it may, for present purposes, the core aspect remains the lack of direct, independent, confidence-inspiring material connecting these applicants to the crime, rendering their case one of further inquiry. The prosecution's own case differentiates roles. In the absence of recovery or direct attribution to these applicants, they are entitled to the concession of bail on parity with the general principle that in cases of peripheral or vicarious roles not supported by independent, corroborative material, liberty is to be favored subject to safeguards.

11. For the foregoing tentative reasons, both Criminal Bail Applications succeed. Consequently:

- (i) **Criminal Bail Application No.2008 of 2025 filed by applicant Rizwanullah alias Babu son of Attaullah is allowed. He 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 P.R. bond in the like amount to the satisfaction of the trial Court.**
- (ii) **Criminal Bail Application No.2042 of 2025 filed by applicant Jawad Ali @ Sheeraz Ali son of Khadim**

***Hussain is allowed. He 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 P.R. bond in the like amount to the satisfaction of the trial Court.***

12. Observations herein are purely tentative and confined to the question of bail. They shall not prejudice the trial Court, which shall decide the case strictly on the evidence led before it, uninfluenced by any observation made in this order. These are the detailed reasons of the Short Order dated: 27-10-2025.

**JUDGE**

Qurban