IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application No.392 of 2026

Applicant	:	Ghulam Kabir @ Sunny through Mr.Intikhab Ahmed, Advocate along with Ms.Umm-e-Habiba, Advocate.
Respondents	:	The State through Mr. Qamaruddin Nohri, Deputy Prosecutor General Sindh.
Date of hearing	:	30.03.2026.
Date of order	:	30.03.2026.

O R D E R

TASNEEM SULTANA J: - Through this criminal bail application, the applicant Ghulam Kabeer @ Sunny seeks post-arrest bail in FIR No. 753 of 2022 registered under Sections 302, 397, 34 PPC at Police Station Brigade, Karachi. Having been rejected his earlier bail application No.4819 of 2024 passed by the learned Additional Sessions Judge-I, Karachi East, vide order dated 10.10.2024, hence this application for same concession.

2. Brief facts of the prosecution case are that on 22.11.2022 at about 2330 hours, the complainant Abdul Ghaffar Khan was present outside his house while his nephew Huzaifa alias Muhammad Nasir, aged about 19 years, was standing in the street with his friends, when two persons riding on a motorcycle came and attempted to commit robbery at gunpoint; upon resistance, both accused persons made firing, as a result whereof one bullet hit the said Huzaifa on his face and he fell down; upon noise, the residents of the locality gathered and apprehended one accused, while the other managed to escape on the motorcycle; the apprehended accused disclosed his name as Jehangir son of Ghulam Sarwar and also disclosed the name of his escaped accomplice as Ghulam Kabeer son of Duraiz Khan; thereafter, the injured was shifted to hospital where he succumbed to his injuries.

3. At the very outset, learned counsel for the applicant summits that he is not pressing the ground of statutory delay and is confining his submissions to the case on merits and he contends that the applicant is innocent and has been falsely implicated in the present case; that his nomination in the FIR is based upon disclosure attributed to the co-accused, which, without independent corroboration, is a weak piece of evidence and

insufficient to connect him with the alleged offence; that the applicant was not apprehended at the spot and no direct allegation of firing has been attributed to him by any witness; that no material has been brought on record during investigation to establish his presence at the place of occurrence at the relevant time; that the statements of witnesses recorded under Section 161 Cr.P.C. are general in nature and do not specifically assign any overt act to the applicant; that no incriminating article has been recovered from the possession of the applicant; and that the case calls for further inquiry within the meaning of Section 497(2) Cr.P.C.

4. Conversely, learned Deputy Prosecutor General, assisted by learned counsel for the complainant, opposed the application and contended that the applicant has been nominated in the FIR as accomplice of the apprehended accused; that the ocular account furnished by prosecution witnesses is consistent and fully supports the prosecution case; that the allegation pertains to robbery coupled with murder and falls within the prohibitory clause of Section 497 Cr.P.C.; that the applicant is a previous convict, having been convicted in Crime No. 656 of 2015 under Sections 353, 324, 186, 34 PPC read with Section 7 of the Anti-Terrorism Act; and that, in view of the material available on record, the applicant is not entitled to the concession of bail.

5. Heard. Record perused.

6. It is by now well-settled that at the stage of bail only a tentative assessment of the material available on record is to be undertaken and deeper appreciation of evidence is not permissible. The accused, in order to secure the concession of bail in cases falling within the prohibitory clause, is required to demonstrate that his case falls within the ambit of further inquiry as contemplated under Section 497(2) Cr.P.C. Such determination hinges upon the existence or otherwise of reasonable grounds to believe the involvement of the accused in the alleged offence. Mere existence of some scope for further inquiry in every criminal case does not, by itself, entitle an accused to bail as a matter of right. For bringing a case within the ambit of further inquiry, there must be material on record which, on tentative assessment, creates doubt with regard to the involvement of the accused. In this regard, the Honourable Supreme Court in the case of ***Iqbal Hussain v. Abdul Sattar and another*** **(PLD 1990 SC 758**) while setting aside the order whereby bail was granted by the High Court, the Court referred to the tendency of courts to misconstrue the concept of further inquiry and held as follows:

> "'It may straightway be observed that this Court has in a number of cases interpreted subsection (2) of section 497 Cr.P.C which, with respect, has not been correctly understood by the learned Judge in the High Court nor has it been properly applied in this case. While he thought that it was a case of further inquiry which element, as has been observed number of times in many cases, would be present in almost every case of this type. The main consideration on which the accused becomes entitled to bail under the said subsection is a finding, though prima facie, by the police or by the court in respect of the merits of the case. The learned Judge in this case avoided rendering such prima facie opinion on merits as it is mentioned in subsection (2) of section 497 Cr.P.C, and relied only on the condition of further inquiry. This approach is not warranted by law. Hence, the case not being covered by subsection (2) of section 497 Cr.P.C, the respondent was not entitled to bail thereunder as of right.

Each case has its own foundation of facts, therefore, it is not possible to put each and every case in the cradle of further inquiry to provide relief to accused by releasing on bail merely by repeating words of further inquiry or raising presumptions and surmises but such consideration must remain confined to tentative assessment of available material only.

7. It reflects from the record that the allegation against the present applicant is that he, along with co-accused, attempted to commit robbery at gunpoint and, upon resistance, made firing which resulted in the death of the nephew of the complainant, and thereafter fled from the place of occurrence. It further reflects that co-accused Jehangir son of Ghulam Sarwar was apprehended at the spot by private persons and subsequently taken into custody by the police, who disclosed the name of the present applicant as his accomplice who escaped from the scene.

8. Perusal of the record further reflects that the occurrence was witnessed by prosecution witnesses, namely, Yasir, Shehroz Khan, Akbar Ali and Abdul Ghaffar Khan, whose statements recorded under Section 161 Cr.P.C. are in line with the version set out in the FIR with regard to the manner of occurrence, the role of the assailants and the apprehension of one accused at the spot. It is further noted that two of the said witnesses, namely Akbar Ali and Yasir, have specifically stated in their statements under Section 161 Cr.P.C. that they could identify both accused persons. The said ocular account, at this stage, is consistent, and does not suffer from any inherent improbability which may call for its tentative disbelieve.

10. The nomination of the present applicant, though emerging through disclosure of co-accused, is not to be examined in isolation at this stage, as the same forms part of the chain of events commencing from the apprehension of co-accused at the spot immediately after the occurrence. When such disclosure is considered in conjunction with the consistent ocular account of the above-named witnesses, it provides sufficient prima facie material connecting the applicant with the commission of the alleged offence, the probative value whereof is to be assessed at trial.

11. It further appears from the record that the occurrence pertains to an offence of robbery coupled with murder, committed in a public place during night hours, which reflects the gravity and seriousness of the allegation. The nature of the accusation and the manner of its commission, as alleged, do not warrant indulgence at this stage.

12. It further reflects from the record that the present applicant was previously convicted in Crime No. 656 of 2015 under Sections 353, 324, 186, 34 PPC read with Section 7 of the Anti-Terrorism Act, 1997, and, after serving the sentence, he was released in the year 2021. Such previous conviction, coupled with his alleged involvement in cases of similar nature, prima facie indicates a pattern of conduct which is a relevant consideration while assessing his entitlement to discretionary relief. Though past conviction is not to be treated as conclusive proof in the present case, yet it cannot be overlooked at this stage and lends further support to the conclusion drawn from the material available on record.

13. In the above circumstances, prima-facie, I am of the tentative view that the learned counsel for the applicant has not been able to make out a case for grant of bail. The bail application being devoid of merits stands dismissed accordingly. It is, however, made clear that the above observations are purely tentative in nature and the same are only meant for the purpose of bail and would have no impact or effect on any party during the trial. Besides, trial court shall conclude the trial within six months from the date of receipt of this order.

JUDGE

Nadeem