IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Bail Appln. No.S-90 of 2025

Applicant		
Attur S/o Muhammad, Solangi	:	Through Mr. Riaz Ali Shaikh, Advocate.
The State	:	Through Mr. Gulzar Ahmed Malano Assistant P.G. Sindh
Complainant, Sanaullah	:	Through Mr. Khan Muhammad Sangi, Advocate.
Date of hearing.	:	18-04-2025.
Date of Order.	:	18-04-2025

O R D E R

Ali Haider 'Ada', J. The applicant seeks pre-arrest bail in Crime No. 03 of 2025, registered at Police Station Kamal Dero on 25.01.2025, on the complaint of Sanaullah. The incident is alleged to have occurred on the same date at about 03:00 a.m. The FIR has been lodged under Sections 381-A and 382 of the Pakistan Penal Code (PPC). Initially, the applicant approached the learned Trial Court for relief, but his application for pre-arrest bail was dismissed vide order dated 31.01.2025. Aggrieved by said order, the applicant has now approached this Court.

2. Brief facts of the case are that on the day of the incident, the complainant along with his witnesses was sleeping in front of his shop. At about 03:00 a.m., the present applicant, along with his brother Abdul Sattar (co-accused) and two unidentified persons, allegedly armed with pistols controlled the complainant party. It is alleged that the accused persons broke the locks of the shop and committed theft of various articles including a solar inverter and batteries. Due to fear of the weapons, the complainant and his witnesses remained silent while the accused managed to flee from the scene. The FIR was subsequently registered on 25.01.2025 at about 07:00 p.m. During investigation, co-accused Abdul Sattar was arrested and certain stolen articles were recovered from him. The final challan was submitted in which the present applicant has been shown as on bail.

3. Learned counsel for the applicant submits that there is an unexplained delay of approximately 16 hours in the registration of FIR, which creates doubt regarding the truthfulness of the version of complainant. He further contends that the alleged stolen articles, such as cartons of soap, tea, batteries and a solar inverter are heavy and bulky and it is highly improbable that the same could have been carried away without the use of a vehicle. However, no such vehicle is mentioned in the FIR. Moreover, during the investigation, the complainant failed to produce any receipts, cash memos, or invoices to establish his ownership or purchase of the stolen items from any wholesaler or company. Learned counsel further argues that the recovery from the co-accused Abdul Sattar does not impact the case of the present applicant, as liability in criminal law is individual and not collective. He also points out that, if, the complainant and his witnesses were allegedly present and controlled by accused, it would have been easier for the accused to obtain the keys rather than break the locks of the shop, which undermines the plausibility of the story narrated in the FIR. He contends that the applicant has been falsely implicated due to a dispute between the Mahesar and Solangi communities, as the applicant belongs to the Solangi tribe while the complainant is from the Mahesar tribe. Further contends that applicant has great apprehension of his arrest at the hands of police as acting under the influence of complainant. In support of his contentions, learned counsel places reliance on the case of *Babar Hussain v. The State* (2020 SCMR 871) and *Maqbool Ahmed v. Station House Officer, Police Station Changa Manga and others* (1999 PCr.LJ 1198).

4. On the other hand, learned counsel for the complainant as well as the Learned Assistant Prosecutor General Sindh have opposed the bail application. They submit that the applicant is specifically nominated in the FIR with a direct role in the commission of the offence, wherein a large quantity of articles was stolen by the accused party. The offence under Section 382 PPC falls within the prohibitory clause of Section 497 Cr.P.C, thus, making the applicant ineligible for the concession of bail. They further contend that there is no mala fide intention on the part of the complainant to falsely implicate the applicant. Moreover, they argue that in the event of arrest, recovery from the applicant is likely to be effected, as from co-accused the recovery was effected. It is also brought to the notice of the Court that the applicant has other criminal cases pending against him, thereby disentitling him from the relief of pre-arrest bail and even applicant did not join

the investigation, so, in view of the such submissions, they pray for dismissal of the bail application.

5. Heard arguments and perused the material available on record.

6. First of all, to fully understand Section 382 PPC, it is essential to consider the relevant illustration provided within this section. This illustration serves to elucidate the precise scope and application of the offence. The maxim ***"Exemplum docet" means "The example teaches"*** is particularly relevant in this context.

Section 382PPC. Theft after preparation made for causing death, hurt, or restraint in order to the committing of the theft. Whoever commits theft having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft or in order to the effecting of his escape after the committing of such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations

(a) A commits theft on property in Z's possession: and, while committing this theft he has a loaded pistol under his garment having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.
(b) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z, should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

7. Upon perusal of the contents of the FIR and the bare reading of Section 382 PPC along with its illustration, it becomes evident that the applicability of the said section is a matter requiring leading of evidence. As, neither the FIR does allege any act involving causing of death, hurt, nor it mention any resistance offered by the complainant at the time of the alleged incident, particularly, the illustrations appended to Section 382 PPC indicate that the offence is committed where theft is carried out by using or showing imminent threat of death or fear of death or hurts or restraint. Therefore, whether such resistance or threat existed is a factual question that can only be determined after recording of evidence during trial. So at this stage bail cannot be withheld as punishment

8. Further, the issue of the involvement of applicant in previous criminal activities, including a case related to gambling and a police encounter, the learned counsel for applicant has placed on record the order dated 15-11-2024 passed by

the learned Judicial Magistrate-I Kandiaro. The order indicates that the applicant was acquitted in the gambling case. Furthermore, in the case related to the police encounter, the FIR was disposed of by the learned Magistrate in "C class," signifying that it was dismissed or filed away. Even, mere involvement of the applicant in other criminal cases, absent any conviction in these cases, cannot serve as a valid ground to withhold the concession of bail. This principle is supported by the verdict in ***Babar Hussain v. The State,*** as cited supra. Additionally, reliance is placed on the case of ***Ayazullah v. The State (2025 PCr.LJ 517)***, in which this Court held that the mere pendency of criminal cases against an accused does not, by itself, disentitle the accused from being granted bail.

9. Further, on the point regarding the applicant's failure to join the investigation, the record indicates that the name of applicant was not listed as an absconder in the challan sheet, instead, his name appears under the bail category. In addition, the learned counsel for the applicant has submitted a case diary, which clearly point out that after the grant of interim pre-arrest bail, the applicant did, in fact, join the trial. Therefore, it is ambitious to assert at this stage that the applicant has intentionally evaded the investigation. It is also pertinent to note that under *Rule 25.2 of the Police Rules 1934, Chapter XXV,* which deals with investigation, the Investigation Officer is empowered to summon any person to attend and assist in the investigation. In light of this, it is evident that the relevant provisions allow the Investigating Officer to take the necessary steps to secure the attendance of applicant, if needed. For further elaboration, Rule 25.2 of the Police Rules, 1934, Chapter XXV, which deals with the procedure for investigation, is reproduced as under:

25.2 Power of Investigation Officers. (I) The powers and privileges of a police officer making an investigation are detailed in sections 160 to 175, Criminal Procedure Code.

An officer so making an investigation shall invariably issue an order in writing in Form 25.2 (I) to any person summoned to attend such investigation and shall endorse on the copy of the order retained by the person so summoned the date and time of his departure from, the place to which he is summoned. The duplicate of the order shall be attached to the case diary.

(2)------
(3)------

10. This position is further elaborate in the judgment of ***Maqbool Ahmed v. Station House Officer, Police Station Changa Manga and others*** (*as mentioned supra*), wherein held that: *"7."A perusal of the aforesaid Rule 25.2 of the Police Rules 1934 has made out that the Investigation Officer has to discover the actual facts of the case. He can pass the order to require the attendance of any person during the investigation and for that matter the notice can be and has to be issued to the prosecution witnesses and even to the accused according to the Form, No, 25.2(I) of the Police Rules 1934 provided therein. In the aforesaid Form 25.2(I) the word "person" instead of the "prosecution witness" or the "accused" has been used which projects that the version of the prosecution and the accused has to be recorded and by practically joining them in the investigation to reach at the truth."*

11. At the time of deciding bail applications, the matter must be examined within the broader Constitutional framework, with due emphasis on the fundamental rights of the individual, particularly the rights to liberty, dignity, due process, and a fair trial. The malafide, being a state of mind, may not always be established through direct evidence. However, it can reasonably be inferred from the surrounding circumstances of the case, such as the absence of incriminating material against the accused or the lack of any lawful or purpose behind the intended arrest. Reliance is placed upon the case of ***Shahzada Qaiser Arfat alias Qaiser v. The State and another (PLD 2021 SC 708)***

12. Before proceeding to the tentative assessment of the facts and material available on record, I find guidance in the authoritative judgment of the Honourable Supreme Court in the case of *Javed Iqbal v. The State through Prosecutor General of Punjab and another* (2022 SCMR 1424). In the said judgment, the Apex Court has categorically held that while deciding pre-arrest bail applications, the Court is not precluded from touching upon the merits of the case to the extent necessary for assessing whether a prima facie case exists against the accused and whether the prosecution's case is free from doubt.

The Honourable Court further emphasized that pre-arrest bail is an extraordinary remedy which can be granted when mala fide or ulterior motives on the part of the complainant or investigating agency are apparent on the face of the record. Thus, a tentative evaluation of the available material is not only permissible but essential in determining whether the applicant is entitled to the discretionary relief of pre-arrest bail.

In view of the above principle, I now proceed to assess the material on record in light of the contentions raised and the legal framework governing such relief.

. Further it is clear that liberty of a person is a precious right; which has guaranteed under Constitution of Islamic Republic of Pakistan 1973; and the same

cannot be take away on bald allegations. In these circumstances, the Petitioner has made out a case for bail as his squally falls within the purview of section 497(2) Cr.PC entitling for further inquiry into his guilt.

13. So far question of recovery is concerned, that recovery was effected from a co-accused cannot, by itself, adversely impact the case of applicant from whom no recovery has been made, whereas the record clearly reflects that the applicant has not been declared as an absconder either by the police or by the learned trial court at any stage of the proceedings, Which clearly indicates that the applicant remained within the bounds of investigation and did not evade or abscond from the process of law. The fundamental right to liberty, as enshrined under Article 9 of the Constitution of the Islamic Republic of Pakistan, cannot be infringed upon in the absence of credible, or corroborative evidence. Mere recovery from a co-accused, without any independent link to the applicant, who seeking bail, cannot serve as a valid ground to justify pre-trial detention. For instance, in ***Muhammad Ijaz v. The State (2005 P.Cr.L.J. 603)***, the Division Bench of Lahore High Court granted bail to the accused because the narcotics were recovered from a house of co-accused.

14. It is also a well-recognized legal maxim that ***"Agere personaliter debet qui personaliter peccat" meaning: He who acts personally should personally be held responsible***. This maxim emphasizes individual liability, making it clear that a person is responsible only for their own wrongful acts, not for those committed by others.

15. For the reasons stated above, I am of the considered view that the applicant, Attur S/o Muhammad Solangi, has succeeded in making out a case for the confirmation of pre-arrest bail. Consequently, the interim pre-arrest bail already granted to him vide order dated 03.02.2025 is hereby confirmed on the same terms and conditions.

16. Needless to mention here that observation made herein above are tentative in nature and learned trial Court may not be influenced of the same in any manner and shall decide the case on its own merits as per evidence and the material ought to be made available before it.

J U D G E