IN THE HIGH COURT OF SINDH CIRCUIT COURT, MIRPURKHAS
Crl. Bail Application No.S-150 of 2025

Applicants/ accused:	1. Ahmed Khan s/o Muhammad Khan. 2. Nazar Khan s/o Wayal Khan. Through Mr. Nabi Bux Narejo advocate.
The State:	Through, Mr. Dhani Bakhsh Mari, Assistant P.G.
Complainant:	Muhammad Imran s/o Abdul Rasheed Arain Through Haji Qalander Bux Laghari advocate.
Date of hearing:	19.06.2025
Date of Order:	19.06.2025

O R D E R.

Jan Ali Junejo, J. – This post-arrest bail application has been filed on behalf of the Applicants, Ahmed Khan S/o. Muhammad Khan and Nazar Khan S/o. Wayal Khan, seeking the concession of bail in respect of Crime No. 67 of 2025, registered at Police Station Satellite Town, Mirpurkhas, under Sections 397 and 34 of the Pakistan Penal Code, 1860 (P.P.C.). Prior to approaching this Court, the Applicants had moved the learned Sessions Judge, Mirpurkhas, for grant of post-arrest bail through Criminal Bail Application No. 460 of 2025. The said application was subsequently transferred to the Court of the learned Additional Sessions Judge-I, Mirpurkhas, who dismissed the same vide order dated 31st May, 2025.

2. The case originates from an F.I.R. lodged by Complainant Muhammad Imran S/o Abdul Rasheed on May 16, 2025, at 21:45 hours, alleging an incident of armed robbery. According to the F.I.R., on May 16, 2025, at about 08:15 hours, while the complainant was proceeding for his night duty on his motorcycle, he was intercepted near Qureshi Banquet on Ring Road by two unknown persons riding a CD-70 motorcycle. The assailants allegedly brandished a pistol, forcing the complainant to stop. They then robbed him of his IOX-Infinix Touch screen mobile phone, a purse containing his CNIC and receipts, and Rs. 250/- cash. The

F.I.R. further states that the culprits, whose faces were open and whom the complainant could identify upon seeing, also removed the "Nalki" (a part of the motorcycle) before fleeing towards Chuna Factory side. The F.I.R. did not specify the names of the accused persons, describing them only as "two unknown persons". It is pertinent to note that the applicants were arrested subsequent to the registration of the F.I.R. and have since been in judicial custody. They had previously approached the learned Sessions Judge, Mirpurkhas, with Criminal Bail Application No. 460 of 2025, which was dismissed vide order dated May 31, 2025.

3. The learned counsel for the Applicants, argued that the F.I.R. is false, fabricated, and a concocted story, and that the applicants are innocent and have not committed any offense. It was submitted that the F.I.R. was delayed by an hour and fifteen minutes, which, though seemingly minor, allowed for consultation and deliberation, raising doubts about its spontaneity and accuracy. A crucial point raised was that the applicants were not named in the F.I.R. This fact, he argued, shifts the burden on the prosecution to establish their involvement through credible evidence, particularly an identification parade. The learned counsel emphasized that no identification parade before a Magistrate was conducted, which is a mandatory requirement when the accused are not named in the F.I.R. and are identified for the first time during the investigation. The observation of the learned Sessions Judge that an identification parade was not necessary because the complainant was with the I.O. at the time of arrest was strongly challenged as being against established principles of law regarding identification. It was argued that no specific role in the commission of the offense has been assigned to either of the applicants/accused in the F.I.R. The learned counsel asserted that the applicants/accused reside in Digri Town, where they have an existing enmity with police officials over local issues. He alleged that they were arrested from their houses in Digri at the instance of the SHO Police

Station Digri and falsely implicated in the present case. He concluded that the case against the applicants/accused is one of "further inquiry" as contemplated under Section 497(2) Cr.P.C., thereby entitling them to the concession of bail.

4. The learned Assistant Prosecutor General, assisted by Haji Qalander Bux Laghari, learned counsel for the complainant, opposed the grant of bail. They contended that the F.I.R. was promptly lodged. It is further argued that the complainant, in the F.I.R., clearly stated that he could identify the culprits as their faces were open. It is further argued that the prosecution has relied on the recovery of the robbed mobile phone, CNIC, cash, and the weapon used from the possession of the applicants/accused, which took place just two days after the incident. They reiterated the finding of the learned Sessions Judge that the complainant was present with the I.O. during the arrest and recovery, and therefore, an identification parade was not deemed necessary.

5. I have considered the arguments advanced by the learned counsel for the Applicants, the learned counsel for the complainant, and the learned Assistant Prosecutor General for the State. I have also carefully examined the material available on record and undertaken a tentative assessment, as permissible at the bail stage in accordance with established legal principles. A perusal of the record reveals that the F.I.R. does not name the Applicants. It merely mentions that the complainant would be able to identify the culprits. Notably, the F.I.R. lacks any description of the assailants' facial features, physical attributes, or other identifying characteristics. Despite the absence of prior suspicion or identification, the Applicants were later arrested without any preliminary linkage to the alleged offence. Crucially, no Test Identification Parade (TIP) was conducted before a Judicial Magistrate to establish their alleged involvement. The prosecution's assertion, accepted by the learned trial Court, that the complainant was present with the Investigating Officer (I.O.) at the time of arrest and

recovery, cannot serve as a valid substitute for a properly conducted TIP, especially when the complainant had no prior familiarity with the accused. This omission raises substantial doubt and necessitates further inquiry regarding the actual identity of the culprits. Although the prosecution claims to have recovered stolen articles and a weapon from the Applicants, this fact is vehemently disputed by the defence, which asserts that the recovery was fabricated. The evidentiary value of such recovery will be tested at trial. However, at the bail stage, the mere allegation of recovery, particularly when it is seriously contested and in light of the Applicants' non-nomination in the F.I.R., warrants a deeper judicial scrutiny. In similar circumstances, the Honourable Supreme Court of Pakistan, in the case of ***Muhammad Suleman v. Riasat Ali and another (2002 SCMR 1304)***, held that: *"Had Riasat Ali been the accused, the complainant would have nominated him as one of the culprits particularly when he has nominated his two sons, namely, Sarfraz and Akbar. Moreover, non-holding of identification parade in respect of respondents after the arrest brings his case within the purview of subsection (2) of section 497, Cr.P.C., as such he was rightly granted bail".*

6. In another significant case, ***Muhammad Rafique v. The State (1997 SCMR 412)***, the Honourable Supreme Court of Pakistan reaffirmed the principle that: *"Fact that the petitioner is accused in a number of cases of robbery, is not sufficient to deprive him of his liberty. It has not come on record, as to, why identification test of the petitioner through eye-witnesses was not held when his name did not appear in the F.I.R. Mere production by the petitioner before police of some cash alleged to have been obtained by robbery, in absence of any other evidence. In this respect the observations made in the case of Ishaq Masih v. The State (1993 SCMR 1322) are relevant"*. Reference may also be made to the following cases:

> ***"1. Asif v. The State (2012 YLR 211); and 2. Atta Muhammad v. The State (2004 P.Cr.L.J. 1431)".***

7. Moreover, the Applicants have asserted that they possess no prior criminal record. This is a significant consideration, as individuals without a history of criminal conduct are generally regarded as less likely to abscond or misuse the concession of bail. The Applicants are already in judicial custody, and the challan has been submitted before the competent Court. In such circumstances, their continued incarceration would serve no meaningful purpose, particularly when there exist sufficient grounds for further inquiry into the allegations. It is a well-established principle of criminal jurisprudence that, at the bail stage, the Court is required to undertake only a tentative assessment of the available material. A detailed appraisal of the evidence is to be strictly avoided at this stage, as it may prejudice either party during the course of trial. The evidence currently available does not, at this point, provide "reasonable grounds for believing" that the Applicants have committed the non-bailable offence with the degree of certainty necessary to warrant denial of bail. On the contrary, the contentions raised by the defence, especially concerning the Applicants' non-nomination in the F.I.R. and the absence of a properly conducted identification parade, clearly attract the provisions of "further inquiry" as contemplated under Section 497(2) of the Code of Criminal Procedure, 1898 (Cr.P.C.). The fundamental right to liberty, as guaranteed under the Constitution, demands that no individual be deprived of personal freedom unnecessarily, particularly when the prosecution's case does not, at this stage, meet the threshold required to negate bail and the guilt of the accused remains to be conclusively established.

8. In view of the foregoing tentative assessment of the material on record and the submissions advanced by learned counsel, this Court is of the considered opinion that the case against the Applicants/accused falls within the purview of "further inquiry" as envisaged under Section 497(2) Cr.P.C. The defence has raised arguable points warranting thorough examination at trial. Continued pre-trial incarceration of the Applicants, especially in the absence of their

nomination in the F.I.R. and the lack of a judicial identification parade, would amount to unwarranted punishment prior to conviction. Furthermore, there is no material before the Court suggesting any likelihood that the Applicants will abscond, tamper with the prosecution evidence, or influence witnesses. Their established ties to the community and absence of any prior criminal history further mitigate such concerns.

9. For the detailed reasons stated above, this Criminal Bail Application is hereby allowed. The Applicants, Ahmed Khan S/o. Muhammad Khan and Nazar Khan S/o. Wayal Khan, are admitted to post-arrest bail, subject to furnishing solvent surety in the sum of Rs. 50,000/- (Rupees Fifty Thousand only) each and executing a personal recognizance bond (P.R. Bond) in the like amount to the satisfaction of the learned trial Court. It is clarified that the observations made herein are tentative in nature and confined solely to the determination of this bail application. They shall not, in any manner, influence the proceedings or findings of the trial Court, which shall decide the case strictly in accordance with the evidence brought on record during trial. These are the reasons of short order dated 19-06-2025.

JUDGE

Faisal