

**IN THE HIGH COURT OF SINDH, BENCH AT
SUKKUR**

Cr Bail Application No.S-767 of 2024

Applicant(s): **Altaf Ahmed** s/o Pir Bux is present along with Mr. Shewak Ram Valeecha, Advocate.

Respondent: The State, through Syed Sardar Ali Shah, Additional Prosecutor General.

Mst. Haneefa, mother of deceased Ayesha is present in person.

Date of Hearing: **26.02.2025**

Date of Decision: **03.03.2025**

ORDER

RIAZAT ALI SAHAR, J- Through the instant criminal bail application, the applicant, Altaf Ahmed, seeks the concession of pre-arrest bail in connection with Crime No. 20 of 2021, registered at Police Station Sangi, for offences punishable under Sections 302, 311, 120-B, 147, 148, and 149 PPC. The applicant, having been refused the relief of pre-arrest bail by the learned Additional Sessions Judge-I/MCTC-I, Sukkur, now invokes the jurisdiction of this Honourable Court by filing the present application under Section 498-A of the Code of Criminal Procedure, seeking the same relief.

2. The case of prosecution, in brief, is that on 29.04.2021, complainant ASI Zaheer Hussain lodged an FIR on behalf of the State, alleging that on the said date, while on routine patrol along with his subordinate staff, he reached Al-Abbas Petrol Pump, where he received confidential information from a reliable source. The information suggested that accused Aaqib had levelled allegations of '*karap*' against his wife, Mst. Aisha, aged approximately 18 to 19 years, accusing her of an illicit relationship with one Akram Jatoi. It was further reported that

accused Aaqib Jatoi, along with his relatives, namely Pir Bux, Altaf, Zahoor, Mukhtiar, and two unidentified individuals, had conspired to kill Mst. Aisha. Acting upon this information, the complainant and his team proceeded to the location identified by the informant. Upon arrival, with the assistance of the lights from the government vehicle, as well as solar and electric bulbs, they observed the accused persons. The complainant party identified Aaqib, Altaf, and Zahoor, who were armed with pistols, while Pir Bux, Mukhtiar, and the two unidentified individuals were carrying guns. It is alleged that accused Mukhtiar forcibly restrained Mst. Aisha by holding her right arm, whereupon accused Pir Bux declared that she had been labelled '*kari*' and, as a matter of *gairat* (honour), she must be killed. Subsequently, accused Aaqib, Altaf, and Zahoor fired directly at Mst. Aisha with their pistols, inflicting multiple gunshot wounds, causing her to collapse to the ground while crying out for help. Upon witnessing the incident, the complainant party immediately disembarked from their vehicle; however, upon seeing the police presence, the accused persons fled the scene. Although the police pursued them, they managed to escape. Thereafter, the complainant party returned to the crime scene, where local women from the village disclosed that accused Aaqib had declared his wife, Mst. Aisha, as '*kari*' and, along with his accomplices, had murdered her by inflicting firearm injuries. The body of deceased was then transported to Taluka Hospital, Pano Akil, for necessary medico-legal formalities. Subsequently, the complainant proceeded to the police station and formally lodged the FIR regarding the incident.

3. It is, *inter alia*, contended by the learned counsel for the applicant that the applicant is innocent and has been falsely and maliciously implicated in the present case by the police. It is further argued that co-accused Pir Bux and Aqib alias Muhammad Aqib Jatoi have already been granted pre-arrest and post-arrest bail by the trial court, thereby entitling the applicant to similar relief on the ground of rule of consistency. Additionally, it is submitted that Mst. Hanifan, one of the legal heirs of the

deceased Mst. Aisha, has sworn an affidavit stating therein that she has no objection to the grant of pre-arrest bail to the applicant. In view of these circumstances, the applicant is entitled to the concession of bail in accordance with the principle of consistency.

4. On the contrary, the learned Deputy Prosecutor General has strongly opposed the grant of bail, contending that the present case involves the brutal killing of an innocent young girl aged approximately 18 to 19 years under the allegation of '*karap*' (*Honour killing*). It is submitted that the applicant is specifically named in the FIR and assigned a direct role in causing firearm injuries to the deceased. Furthermore, it is argued that the offence with which the applicant is charged is not only grave and heinous in nature but also falls within the prohibitory clause of Section 497 Cr.P.C, thereby disentitling him to the extraordinary concession of pre-arrest bail. In support of his arguments, the learned Deputy Prosecutor General has placed reliance on the case of *Naseer Ahmed v. The State (PLD 1997 Supreme Court 347)*.

5. I have heard the arguments advanced by the learned counsel for the applicant and the learned Deputy Prosecutor General and have carefully examined the material available on record. With regard to the contention raised by the learned counsel for the applicant that co-accused Pir Bux and Aaqib alias Muhammad Aaqib were granted pre-arrest and post-arrest bail by the trial court through orders dated 30.09.2021 and 03.11.2021, respectively, it appears that the trial court adopted an extraordinarily lenient approach while granting bail to the said co-accused. In the present case, there is no indication of *mala fide* intent on the part of the prosecution, nor is there any ground to warrant further inquiry into the guilt or involvement of the applicant. Consequently, the applicant cannot claim the concession of pre-arrest bail on the principle of parity, as no

mitigating or extenuating circumstances have been demonstrated to justify such relief.

6. Furthermore, the mere submission of an affidavit by Mst. Hanifan, the mother of the deceased Mst. Aisha, wherein she expresses no objection to the grant of pre-arrest bail in favour of the applicant, does not, in and of itself, constitute a legally sustainable ground for the grant of such an extraordinary relief. The affidavit has been sworn by Mst. Hanifa, mother of deceased Aisha, who appeared in person and disclosed about other sisters/legal heirs of the deceased, as under:

i. Mst. Nadia, ii. Mst. Sumayya, iii. Mst. Jveria, iv. Mst. Sawera and v. Mst. Hawa.

7. The contents of the affidavit do not, in any manner, indicate the probability of a compromise between the parties; rather, they merely reflect a statement of *no objection* to the grant of pre-arrest bail in favour of the applicant. In order to ascertain the voluntariness of such an affidavit, Mst. Hanifa was summoned and examined in person before this Court. During her appearance, she appeared visibly confused and under apparent pressure. Given the nature of such affidavits, there exists a significant possibility that Mst. Hanifa, being a female and the mother of the deceased Aisha, may have been subjected to undue pressure, coercion, or compulsion, which cannot be ruled out at this stage. It is a well-recognised reality that, in a male-dominated society, women are often unable to withstand societal pressures and may be compelled to submit affidavits of this nature. Accordingly, the veracity and voluntariness of the affidavit require proper scrutiny through evidence, which can only be determined during the course of trial. At this tentative stage, the affidavit in question does not hold probative value for consideration. Moreover, it is pertinent to mention that Mst. Hanifa is not a prosecution witness in the instant case.

8. It is an irrefutable reality that, within our societal framework, individuals are often reluctant to step forward and lodge a FIR on behalf of the relatives of a deceased person in cases of ***Karo-Kari (honour-related crimes)***. This reluctance predominantly stems from the pervasive fear of familial retribution, social ostracisation, and the deep-seated cultural constraints that discourage involvement in such matters. Consequently, it is the law enforcement authorities who demonstrate commendable bravery by taking the initiative to register such FIRs as the complainant, thereby ensuring that justice is not obstructed by societal apprehensions. Rather than discouraging such efforts, it is imperative that the police force be duly supported, encouraged, and provided with institutional backing to enable them to fulfil their duties and legal obligations without intimidation or external pressures. The proactive role of the police in initiating legal proceedings in cases where private complainants are unwilling or fearful to do so reflects their commitment to upholding the rule of law and maintaining public order.

9. It is a well-settled principle of law that the concession of pre-arrest bail is not a matter of right but rather an exceptional discretionary relief, to be exercised judiciously and only in circumstances that warrant deviation from the general rule. *Extraordinary reliefs must be granted with extraordinary caution (Extraordinaria remedia adhibenda sunt cum magna cautela)*. The extraordinary relief of pre-arrest bail by the Honourable Supreme Court has been elucidated in ***Ghulam Farooq Channa v. Special Judge ACE-I (Karachi) and another (PLD 2020 SC 293)***.

“4. Grant of bail to an accused required in a cognizable and non-bail offence prior to his arrest is an extraordinary judicial intervention in an ongoing or imminent investigative process. It clogs the very mechanics of State authority to investigate and prosecute violations of law designated as crimes. To prevent arrest of an accused where it is so required by law is a measure

with far reaching consequences that may include loss or disappearance of evidence. The Statute does not contemplate such a remedy and it was judicially advented way back in the year 1949 in the case of Hidayat Ullah Khan v. The Crown (PLD 1949 Lahore 21) with purposes sacrosanct and noble, essentially to provide judicial refuge to the innocent and the vulnerable from the rigors of abuse of process of law; to protect human dignity and honour from the humiliation of arrest intended for designs sinister and oblique. The remedy oriented in equity cannot be invoked in every run of the mill criminal case, prima facie supported by material and evidence, constituting a non-bailable/cognizable offence, warranting arrest, an inherent attribute of the dynamics of Criminal Justice System with a deterrent impact; it is certainly not a substitute for post arrest bail. “

10. The grant of pre-arrest bail is contingent upon the fulfilment of stringent legal prerequisites, including the demonstration of malice, ulterior motives, or a mala fide intent on the part of the prosecution. In the absence of compelling and justifiable reasons that would substantiate the necessity of extending such relief, the mere *no objection* on the part of one of the legal heirs of the deceased cannot, in isolation, serve as a sufficient basis for admitting the applicant to pre-arrest bail. This principle assumes greater significance in cases involving offences of a heinous and grievous nature, where considerations of the public interest, the administration of justice, and the rule of law must prevail over individual concessions.

11. I am not persuaded by the argument grounded in the principle of consistency, nor do I find merit in the reliance placed upon the affidavit of the mother of the deceased, who, it must be noted, is not an eyewitness to the incident in question. It is a well-established principle of law that each case must be adjudicated on its own merits, free from undue reliance on precedents that bear no direct relevance to the specific facts and circumstances at hand. "***Casus omissus pro omisso habendus***

est"¹, is particularly relevant in ensuring that legal determinations are made strictly on a case-by-case basis, without mechanical application of precedent where the factual matrix is distinguishable.

12. Furthermore, I do not concur with the legal reasoning employed by the learned trial judge in granting bail to the co-accused. The decision appears to lack judicious consideration of the gravity of the offence and the broader implications of such leniency in cases of this nature. It is imperative to underscore that **'Karap' (Honour Killing)** constitutes one of the most heinous crimes, universally condemned by civilised nations across the globe, yet it continues to persist with alarming prevalence in the rural areas of Sindh. The practice of **'Karap'** is deeply entrenched in societal norms, tracing its origins to an era where ignorance prevailed, and it has since evolved into a pernicious tool wielded for ulterior motives. The sheer gravity of allegations pertaining to **'Karap'** is such that countless innocent women have fallen victim to extrajudicial killings, often without the benefit of due process or proper inquiry. In a modernised Islamic society, such barbaric acts are unequivocally discouraged—not only by the ethical and moral fabric of a civilised society but also by the fundamental tenets of Islam, which upholds justice, the sanctity of life, and the rule of law. "***La darar wa la dirar***"²—there shall be no harm and no reciprocation of harm—is a core principle of Islamic jurisprudence that stands in direct opposition to the perpetuation of honour-based violence. In light of these considerations, it becomes imperative that courts adopt a stringent approach in cases of honour killings, ensuring that the legal process is neither circumvented nor exploited under the guise of cultural justifications. The dispensation of justice in such matters must reflect the fundamental principles of fairness, equity, and the

¹ A case omitted (by the legislature) must be regarded as intentionally omitted.

² لَا ضَرَرَ وَلَا ضِرَارَ - Sunan Ibn Majah – Hadith No. 2341

rule of law, thereby preventing the perpetuation of a practice that has no place in a just and modern society.

13. In the case of *Naseer Ahmed (supra)*, the Honourable Supreme Court has unequivocally held that, at the stage of deciding a bail application, the court is required to undertake a tentative assessment of the material available on record, which is distinct from the final appraisal and evaluation of evidence, a function exclusively within the domain of the trial court. The Honourable Supreme Court further disapproved of the growing practice of filing affidavits by witnesses at the bail stage with the intention of casting doubt on the prosecution's case and thereby facilitating the grant of bail to the accused. Such tactics cannot form a valid basis for granting bail in cases involving serious and heinous offences.

14. Furthermore, in the present case, an innocent woman was brutally murdered on the pretext of the so-called allegation of '*karap*'. In such matters, the courts must exercise due caution and ensure that bail applications are decided strictly on their own merits, bearing in mind the distinction between a tentative assessment at the bail stage and the actual evaluation of evidence, which falls within the exclusive jurisdiction of the trial court.

15. The applicant is specifically nominated in the FIR, with a direct role attributed to him in firing upon the deceased Mst. Aisha. The complainant and the eyewitnesses are police officials, and there is no apparent enmity or malafide motive on the part of the police to falsely implicate the applicant in such a heinous offence. The FIR was lodged promptly, and all the prosecution witnesses have consistently implicated the applicant in the commission of the alleged crime. The offence with which the applicant is charged is of a grave and serious nature, carrying the punishment of death or, at the very least, life imprisonment. Furthermore, Mst. Hanifa, one of the legal heirs of the deceased Aisha, swearing an affidavit stating no objection to the grant of

pre-arrest bail to the applicant does not, in and of itself, constitute a legally sustainable ground for the grant of such an extraordinary relief, as discussed in paragraphs 6, 7, 8, 9, 10, and 11. Given the severity of the allegations and the material available on record, the applicant is not entitled to the extraordinary concession of pre-arrest bail.

16. In view of the foregoing discussion, the applicant/accused has failed to establish a case warranting the grant of pre-arrest bail. Consequently, the instant bail application stands **dismissed**, and the interim pre-arrest bail earlier granted to the applicant by this Court on 22.10.2024 is hereby recalled.

17. It is imperative to clarify that any observations made herein are of a tentative nature and shall not, in any manner, prejudice or influence the trial court in its determination of the case on merits. However, the trial court may, if it deems fit, issue notices under Section 497(5) Cr.P.C. to co-accused Pir Bux and Aqib for re-hearing of their bail application in accordance with the law.

NOTE. A copy of this order shall be circulated to the **Subordinate Judiciary** through the **learned Registrar of this Court** and to the **Inspector General (I.G.) Police, Sindh** for further dissemination within the department across the **Province of Sindh**.

J U D G E

AHMAD