

**THE HIGH COURT OF SINDH AT KARACHI**

Crl. Bail Application No. 2929 of 2024

Applicant : Abdul Ghaffar Suhag  
through Mr. Muhammad Aqib  
Rajpar, advocate.

Respondent : The State  
Mr. Muhammad Raza,  
Deputy Prosecutor General

Complainant : Ajiz Ali  
through Mr. Shuhab Din Siyal,  
advocate

Date of short order : 10<sup>th</sup> March, 2025

Date of reasons : 10<sup>th</sup> March, 2025

**ORDER**

**Jan Ali Junejo, J.--** The present Criminal Bail Application has been filed on behalf of the Applicant/Accused, who is seeking post-arrest bail in connection with a case stemming from FIR No.458 of 2024, registered at P.S. Aziz Bhatti, Karachi, under Sections 397/34, P.P.C. The Applicant/Accused initially approached the learned Sessions Court by filing Bail Application No.5990 of 2024, which was subsequently dismissed by the Court of the learned XIVth Additional Sessions Judge, Karachi-East, vide Order dated 03-12-2024.

2. The facts relevant to the present criminal bail application are as follows:

*“On June 28, 2024, complainant Ajiz Ali, son of Ghulam Mustafa, reported at P.S. Aziz Bhatti that three young men in Shalwar Kameez on an unidentified motorcycle-70 robbed him at gunpoint at Chandra Chowk Tayyab Goth, Karachi, at 10:30 AM. They snatched Rs. 50,000 and an I-*

*Tel phone (SIM: 0329-2201692). During the incident, a brown wallet fell from one assailant, containing a Rs. 500 note, a chit with Abdul Ghaffar's name and CNIC (45302-9193520-5), and three photographs. Ajiz noted one perpetrator appeared Sindhi and claimed he could identify them. The suspects fled with the robbed items, leaving the wallet as potential evidence."*

3. The learned counsel for the Applicant has argued that the applicant is entitled to post-arrest bail as he has been falsely implicated due to police malafide intent and a longstanding familial vendetta. It is further argued that the prosecution has failed to establish any direct involvement of the applicant, and there is an unexplained four-day delay in lodging the FIR, which is fatal to the prosecution's case. He further argues that, the prosecution primarily relies on an extrajudicial confession before the police, which is inadmissible under Articles 38 and 39 of the Qanoon-e-Shahadat Order, 1984. It is further contended that the case is based solely on circumstantial evidence, including the alleged recovery of a wallet and an unsubstantiated "pointation", neither of which conclusively establishes the applicant's guilt. He further contends that, the charges under Sections 397 and 412 PPC are inapplicable, as no weapon was used and the elements of dacoity are entirely absent. He further contends that the applicant's name does not appear in the FIR, there are no eyewitness accounts or CCTV footage linking him to the offense, and he has been in prolonged pre-trial detention without justifiable cause. Given these facts, the case warrants further inquiry under Section 497(2) Cr.P.C., especially considering the weak evidence and the absence of any risk of tampering with evidence. The applicant is presumed innocent until proven guilty, and where reasonable doubt exists, bail should be granted in the interest of

justice. It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to grant post-arrest bail to the applicant in the interest of justice. The learned counsel for the applicant has relied upon the following case laws in the bail application:

- 1995 MLD 349;
- 2000 SCMR 1634;
- 2009 SCMR 1488;
- 1978 SCMR 64.

4. The learned counsel for the complainant vehemently opposed the bail application, arguing that the applicant is directly involved in the commission of a heinous offense, which carries severe punishment and falls within the prohibitory clause of Section 497 Cr.P.C. It was contended that the applicant was positively identified by the complainant during a duly conducted identification parade, which was free from any procedural irregularities, thereby establishing his prima facie involvement in the crime. It was further argued that the delay in lodging the FIR was justified and does not cast doubt on the prosecution's case, as the complainant was under distress following the traumatic incident. The learned counsel also emphasized that strong circumstantial evidence exists, including the recovery of the robbed wallet and the applicant's pointation, which sufficiently connects him to the offense. Additionally, the learned counsel submitted that extrajudicial confessions, though challenged by the defense, gain credibility when corroborated by other material evidence, and in this case, the applicant's role is clearly established. The presence of private witnesses further strengthens the prosecution's version, and there is no reason to disbelieve their statements at this stage. Furthermore, it was asserted that granting bail

would pose a serious risk of evidence tampering and witness intimidation, which could obstruct the fair trial process. The applicant's plea for further inquiry under Section 497(2) Cr.P.C. was also opposed on the ground that sufficient incriminating material is available to connect him with the offense, and the principles of further inquiry do not apply in such circumstances. In light of these submissions, the learned counsel for the Complainant prayed for the dismissal of the bail application in the interest of justice.

5. The learned Deputy Prosecutor General (DPG) strongly opposed the bail application, contending that the applicant is directly involved in the commission of a serious and heinous offense, which falls within the prohibitory clause of Section 497 Cr.P.C. It was argued that the FIR, though delayed, is not fatal to the prosecution's case, as the delay is well explained and does not cast doubt on the veracity of the allegations. The prosecution's case is supported by strong circumstantial evidence, including the recovery of the wallet belonging to the complainant and the applicant's pointation, both of which substantiate his involvement in the crime. Furthermore, the extrajudicial confession, though challenged by the defense, gains credibility when read in conjunction with the other incriminating material on record.

The learned DPG further asserted that the application of Sections 397 and 412 PPC is justified, as the offense involves robbery, and the recovery of robbed items from the possession of the applicant is sufficient to establish his role in the crime. The mere absence of direct eyewitness testimony or CCTV footage does not render the prosecution's case weak, especially when the chain of circumstantial evidence is complete and corroborative. Additionally, granting bail at this stage would

pose a serious risk of the applicant tampering with evidence or influencing witnesses, thereby obstructing the course of justice. It was also emphasized that the principles of "further inquiry" under Section 497(2) Cr.P.C. do not apply in this case, as the prosecution has presented prima facie sufficient material to connect the applicant with the offense. Given the gravity of the allegations and the strong likelihood of conviction, the applicant does not deserve the concession of bail. The learned DPG, therefore, prayed for the dismissal of the bail application in the interest of justice.

6. I have given due consideration to the arguments advanced by the learned counsel for the applicant/accused, the learned counsel for Complainant as well as the learned Deputy Prosecutor General. Furthermore, I have meticulously examined the material available on record with utmost care and judicial prudence. Upon a thorough and meticulous scrutiny of the case record, it reveals that the applicant was positively identified by the complainant during an identification parade conducted before the concerned Judicial Magistrate. The defense contends that the investigating officer had shown the applicant to the complainant before the identification parade, rendering the process unreliable. However, a perusal of the identification parade memo discloses that the applicant was specifically asked whether the complainant had seen him in police custody prior to the identification parade, to which he responded, "No, Sir". This refutes the defense's assertion and supports the credibility of the identification process. Furthermore, private witnesses have been associated with the case, strengthening the prosecution's version. The offence charged against the applicant under Sections 397, P.P.C. is of a heinous nature, carrying severe punishment, which necessitates cautious consideration before granting bail. The learned

counsel for the applicant has argued that the case does not fall within the prohibitory clause of Section 497(1) Cr.P.C., warranting bail as a matter of right. However, the Hon'ble Supreme Court of Pakistan in *Shameel Ahmed v. The State (2009 SCMR 174)* has categorically held that bail in cases not falling within the prohibitory clause is not a rule of universal application and that each case must be examined on its own facts and circumstances. Similarly, in *Afzaal Ahmed v. The State (2003 SCMR 573)*, it was held that the mere fact that an offense does not fall within the prohibitory clause does not automatically render itailable, and the Court retains discretion in granting bail based on established legal principles. Additionally, the Hon'ble Supreme Court in *Mehboob-ul-Hassan v. The State (1995 SCMR 1013)* upheld the denial of bail to an accused correctly identified in an identification parade. Likewise, in the case of *Muhammad Shoaib v. The State (2018 YLR Note 120)*, this Court held as follows: "After his arrest identification parade of the applicant was held through PW Muhammad Ali, who correctly identified the applicant during identification parade and stated that on 20.10.2015 at about 9:30 the accused was coming from back door of the house of Chaudhry Akhtar at PIB Colony, which is in corroboration with the statement of said PW Muhammad Ali recorded under section 161, Cr.P.C. wherein he has stated that he has seen the accused while escaping from back door of the house of the complainant". It was further observed that: "So far the contention of learned counsel for the applicant that the co-accused has been granted bail on the ground of plea of alibi therefore, the applicant is entitled for grant of bail on the rule of consistency is concerned, in my humble opinion is devoid of any force for the simple reason that in criminal administration of justice, the case of each and every accused is different from the case of co-accused and it could not be said that the case of one accused is identical to the case of the other accused. In this case sufficient material is available against the

*applicant, which prima facie connects him in commission of the offence”.*

7. Considering the strong prima facie evidence against the applicant, including his identification in the identification parade, the recovery of robbed articles, and the presence of corroborative witness testimony, I do not find any reasonable grounds to treat this case as one warranting “further inquiry” under Section 497(2) Cr.P.C. The seriousness of the allegations and the potential punishment also negate any presumption in favor of bail. Thus, the Applicant is not entitled for grant of bail at this stage.

8. In light of the foregoing reasons, the present bail application filed on behalf of the Applicant, being devoid of substantive merit, is hereby dismissed. It is further clarified that the observations made herein are confined solely to the adjudication of this bail application and shall not prejudice or influence the merits of the case during the trial proceedings.

**JUDGE**