

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 572/2025.

Applicants : 1). Mst. Basheera W/o Sarwar,
2). Mst. Sadia D/o Sarwar,
Through Mr. Ahmed Nawaz, advocate

Respondent : The State
through Mr. Qamaruddin Nohri, DPG
duly assisted with Mr. Zubair Ahmed Advocate.

Date of hearing : 11.04.2025

Date of order : 24.04.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicants named above seeks post-arrest bail in respect of FIR No. 355/2024 for offence under section 381/34 registered at P.S Clifton, Karachi South. Two bail applications of applicants were dismissed vide order dated: 27-02-2025 passed by learned IXth Additional Sessions Judge South Karachi and order dated:13-12-2024 passed by learned Civil Judge/Judicial Magistrate-III Karachi South.

2. The allegation against the applicants is that, while working as a domestic maid in the complainant's household, both the applicant's committed theft of a substantial sum comprising USD 50,000, Pakistani currency, and prize bonds, collectively valued at approximately Rs.4,000,000/-. The FIR specifically names the applicant and attributes to her a direct and principal role in the commission of the theft. It is further alleged that, upon their arrest, an amount of Rs. 40,000/- was recovered from possession of accused Mst. Basheeran.

3. Learned counsel for the applicants contends that the FIR was lodged after an unexplained and inordinate delay of about one month, which casts doubt upon the veracity of the prosecution's version. He further submits that the applicant is a woman with no prior criminal record, and as such, is entitled to the statutory benefit of bail. It is asserted that nothing incriminating was recovered from her at the time of arrest and that the alleged recovery is foisted upon her subsequently. It is also argued that the offence under Section 380 PPC does not fall within the prohibitory clause of Section 497(1) Cr.P.C., thus making the case one of further inquiry, wherein the grant of bail becomes a rule rather than an exception.

4. Conversely, the learned Assistant Prosecutor General, assisted by learned counsel for the complainant, has opposed the grant of bail, arguing that the applicants are specifically named in the FIR with a clear and defined role. It is contended that the applicants, being in a position of trust as a domestic servants, misused that trust and committed theft from within the complainant's home. They further submit that the recovery of a portion of the stolen amount from exclusive possession of Mst. Basheeran strengthens the prosecution's case, and that her role is distinguishable from the co-accused, who was granted bail by the learned trial court on the ground of non-nomination and lesser involvement.

5. While there are allegations of theft and recovery against the applicants, it is to be noted that the offence alleged under Section 380 PPC is punishable with imprisonment extending up to seven years, and thus does not fall within the prohibitory clause of Section 497(1) Cr.P.C. It is well-settled law that in cases not falling within the prohibitory clause, grant of bail is a rule and refusal an exception. The Honourable Supreme Court, in the case reported as *Muhammad Tanveer v. The State* (PLD 2017 SC 733), has authoritatively held that in offences not falling within the prohibitory clause, the courts ought to lean in favour of granting bail, particularly where no exceptional circumstances exist justifying continued incarceration.

6. Moreover, the applicants being women also entitled to the benefit of statutory leniency under the proviso to Section 497(1) Cr.P.C., unless their involvement is found to be of such exceptional nature as to disentitle them from such concession, which does not appear to be the case at this stage since no previous criminal history is on record. The evidentiary value of the alleged recovery and its connection to the applicants shall be determined at the stage of trial. At this preliminary stage, it cannot be said with certainty that the prosecution's case is free from doubt, particularly in view of the unexplained delay in registration of FIR and the disputed nature of recovery.

7. Given the above, prima facie applicants have succeeded to make out case for further enquiry as envisaged u/s 497(II) Cr.P.C. Accordingly, the applicants are admitted to bail subject to furnishing a solvent surety in the

sum of Rs. 200,000/- (Rupees Two Hundred Thousand only) each and a personal bond in the like amount to the satisfaction of the learned trial Court. Needless to mention, the observations made herein are tentative in nature and shall not influence the merits of the case at trial, which shall proceed strictly in accordance with law.

J U D G E