

ORDER SHEET

THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No.621 of 2025

Date: Order with signature(s) of the Judge(s)

For hearing of bail application.

21-03-2025

Mr. Habib-ur-Rehman, advocate for Applicant/accused.
M/s. Salahuddin Khan Gandapur and Aijaz Bangash,
Advocates for Complainant.
Mr. Qamaruddin Nohri, Deputy Prosecutor General for State.

Jan Ali Junejo, J.— Through this Criminal Bail Application, the Applicant seeks post-arrest bail in FIR No. 324/2023, registered under Sections 392, 397, 302, 427, and 34 of the Pakistan Penal Code (PPC) at Police Station Gulshan-e-Maymar, Karachi. The applicants were initially denied bail by the learned Additional Sessions Judge-VII, Karachi-West, vide order dated 10-02-2025 in Criminal Bail Application No. 539/2025, which is now under challenge before this Court.

2. The case of the prosecution, as narrated in the FIR lodged by the complainant, Hassan Naseer, is that On 27/07/2023, at approximately 12:00 PM, near Ahmed Brohi Goth, Northern Bypass (Gulshan-e-Maymar, Karachi), Hassan Naseer (resident of House No. 39-B, Business Society, Karachi), along with his brother Nauman Naseer and Abdul Rasheed Khan, was traveling in a silver-colored Parus Maker car (Reg. No.BTA-737) when two unknown young men

on a motorcycle signaled them to stop. Upon refusal, the assailants opened fire, with one bullet shattering the left-side window and striking Nauman Naseer's left arm. He recited the Kalma three times before succumbing to his injury. The robbers then looted Rs. 10,000 and an Infinix OX NEO mobile phone (SIM numbers: 0306-2152071 & 0335-5555380) from the deceased, and Rs. 2,000 along with a Vigotel keypad phone (SIM: 0312-3058766) from Abdul Rasheed, before fleeing towards the Goth (village). Hassan Naseer rushed his brother to Baqai Hospital and later Abbasi Shaheed Hospital, where ML No. 7033/23 was obtained. The post-mortem was declined, and the deceased's body was taken into custody. Hassan Naseer, who can identify the culprits, registered F.I.R. against the two armed suspects in shalwar kameez, holding them responsible for murder, robbery, and vehicle damage.

3. The learned counsel for the applicant argued that the applicant is innocent and has been falsely implicated due to previous enmity. He emphasized that the FIR does not name the applicant, nor does it assign any specific role to him. He further contended that there is an unexplained delay of six hours in lodging the FIR, which creates doubts about the prosecution's version. Additionally, no recovery has been made from the applicant, and there is no substantial evidence linking him to the crime. It was further urged that the applicant has not been in Karachi for the past three years, and the prosecution's reliance on the mere statement of a co-accused is insufficient for denying bail. Lastly, it was argued that the investigation is complete,

and the final challan has been submitted, making the applicant's further detention unnecessary. He prayed for the grant of bail under Section 497(2) Cr.P.C., as the case requires further inquiry.

4. Learned counsel for the complainant opposed the bail application, arguing that the applicant is directly linked to the crime through strong circumstantial and forensic evidence, including the recovery of the deceased's robbed mobile phone traced to the applicant through IMEI tracking. He contended that eyewitness Abdul Rasheed Khan identified the applicant in a properly conducted identification parade, reinforcing his involvement. He further argued that the applicant confessed during interrogation, and his arrest in another case in KPK further establishes his criminal conduct. The offense involves heinous charges of murder and armed robbery, which fall within the prohibitory clause of Section 497 Cr.P.C., making him ineligible for bail. Moreover, he emphasized that the applicant has failed to establish any mala fide intent on the part of the complainant or prosecution to justify false implication. Given the sufficient material available to connect the applicant with the crime, he prayed for the dismissal of the bail application.

5. Conversely, learned DPG for the State vehemently opposed the bail application, arguing that the applicant was arrested in another case in KPK and subsequently linked to the present crime based on forensic digital evidence. He contended that the robbed mobile phone of the deceased was recovered and traced to the

applicant, proving his involvement. Moreover, eyewitness Abdul Rasheed Khan identified the applicant in a valid identification parade conducted before a magistrate. It was further argued that the applicant confessed during interrogation, strengthening the prosecution's case. He also pointed out that the gravity of the offense, which involves murder and armed robbery, falls under the prohibitory clause of Section 497 Cr.P.C., making him ineligible for bail. Lastly, he contended that the rule of consistency does not apply, as the co-accused who were granted bail were on different legal footing and were not identified by witnesses. Lastly, the learned DPG prayed for dismissal of bail.

6. After careful consideration of the arguments and perusal of the record, the Court finds as follows: The record reflects that the Investigating Officer, SIP Muhammad Sarwar, submitted a comprehensive report, revealing the following:

6.1. Digital & Forensic Evidence

- Geo-fencing and Call Detail Records (CDR) analysis identified the applicant's movement near the crime scene at the relevant time.
- The deceased's robbed mobile phone was recovered and traced to the applicant through IMEI tracking, confirming possession of robbed property.
- Witness Abdul Rasheed Khan positively identified the applicant during a judicial identification parade.

6.2. Arrest & Investigation Proceedings

- Based on forensic leads, the police sought permission from the Home Department Sindh and the DPO District Tank, KPK, to conduct an operation in KPK.

- The applicant was arrested in District Tank, KPK, along with other co-accused.
- Co-accused Rizwan Ullah admitted during interrogation that he bought the robbed mobile phone from Noor ul Salam @ Saim (applicant).

6.3. Final Challan & Strength of Prosecution Case

- Final challan has been submitted against the applicant under Sections 392, 397, 302, 427, 34 PPC, proving the case is ripe for trial.
- Eyewitness account, forensic tracking of robbed property, geo-fencing data, and CDR analysis provide sufficient evidence to link the applicant to the offense.

7. After a tentative assessment permissible under the law and a review of the case record, this Court finds as follows: Geo-fencing data and CDR analysis place the applicant near the crime scene, contradicting his claim of being in KPK at the relevant time. The recovery of the deceased's robbed mobile phone from the applicant establishes his possession of robbed property. Furthermore, eyewitness Abdul Rasheed Khan positively identified the applicant during a legally conducted identification parade, adding weight to the prosecution's case. The applicant's own confession during interrogation, corroborated by other evidence, cannot be ignored at this stage. Given the serious nature of the offense, involving murder, armed robbery, and property destruction, the case falls within the prohibitory clause of Section 497 Cr.P.C. The prosecution has presented sufficient material connecting the applicant to the crime, ruling out the argument of further inquiry under Section 497(2) Cr.P.C. In view of the strong evidence, including eyewitness

identification, digital tracking, possession of robbed property, and confessional statements, the applicant has failed to make out a case for bail. In similar circumstances, the Honourable Apex Court refused bail in ***Muhammad Atif v. The State and another (2024 SCMR 1071)***, holding that: *“The material collected in the investigation in the case of Farooq and Khalid shows that they were not present on the scene of the crime. This is not so in the case of the petitioner. Therefore, material collected in the investigation against the present petitioner is different from that collected against them. The ground on which they have been granted bail is not available to the petitioner. The case against the petitioner is therefore not at par with that against those accused persons but rather is distinguishable in a substantial aspect. The allegation made against the petitioner of being present on the spot and having made fires on the deceased sons of the complainant by his firearm is not only supported by the statements of the eye-witnesses but also corroborated by the recovery of the weapon of offence effected from him in the investigation. There is, as such, sufficient incriminating material available on the record of the case to connect the petitioner with the commission of the alleged offence, and his case does not come within the scope of the provisions of Section 497(2), Cr.P.C., nor does the rule of consistency apply to him”*. Under these circumstances, the Order dated 10-02-2025, rejecting the applicant’s bail request, as passed by the learned trial Court, is legally justified and does not warrant any interference by this Court.

8. For the reasons outlined above, the bail application filed on behalf of the Applicant being bereft of substantive merits is hereby dismissed. It is expressly clarified that the observations and conclusions rendered in this order are strictly limited to the disposal of the present bail application and do not constitute an opinion on the merits of the case. These remarks shall not be interpreted as prejudicing the rights, claims, or defenses of either party—prosecution or defense—during the trial proceedings. The trial Court shall adjudicate the matter independently, uninfluenced by any findings articulated herein, and solely based on evidence adduced and legal principles applicable at the appropriate stage. These are the reasons for short Order dated: 21-03-2025.

JUDGE