IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.561 of 2025

Applicants	:	Inayat Khan son of Saman Shah @ Sher Afzal through Mr. Muhammad Nasir, Advocate
Respondent	:	The State through Ms. Seema Zaidi APG.
Complainant	:	Through Mr. Shah Imroz Khan
Date of hearing	:	10.04.2025
Date of order	:	17.04.2025

O R D E R

KHALID HUSSAIN SHAHANI, J. – The applicant Inayat Khan seeks post-arrest bail in a case bearing crime No.266/2024, offence u/s 302/109/34 PPC of P.S Orangi Town. The bail plea of applicant was declined by the learned Xth Additional Sessions Judge Karachi West, on 21.01.2025.

2**.** The brief facts of the case, as narrated in the FIR by the complainant, Habib ur Rehman, are that his daughter, Asma, was married to Hafeezullah, about five to six years prior to the incident. The couple resided in a rented premises situated in MPR Colony, Mujeeb Goth, Orangi Town, and had two children from the wedlock. According to the complainant, the couple was living a contented marital life. However, on 28.04.2024, while the complainant was present at his residence, some area residents informed him that his daughter Asma had been murdered and her dead body had been shifted to Abbasi Shaheed Hospital. Upon receiving such distressing information, the complainant, accompanied by his wife Ehsan Bibi and son Habib Zada, reached Abbasi Shaheed Hospital and found the dead body of his daughter lying in the mortuary. The complainant observed visible injuries on her face, head, and other parts of the body, allegedly caused by a cleaver (toka) and a hammer. Upon further inquiry, it was revealed that the accused Inayatullah, Nayer, Hafeezullah, and an unidentified individual, had murdered his daughter Asma under the pretext of honour, on the allegation of her having a bad character. Consequent upon; case was registered inter-alia on above facts.

3. Learned counsel contended that applicant is innocent and falsely involved in this case; learned counsel alleged arrest of applicant is shrouded in serious doubt and reflects mala fide on the part of the police.

He pointed out that as per the Crime Scene Unit (CSU) Form, the applicant was shown to have been apprehended at 08:50 a.m. on the vary day of the incident. However, the memo of arrest and recovery prepared by the police reflects that the applicant was formally shown arrested later the same day at 2230 hours. This discrepancy, it was argued, casts serious doubt on the transparency and legality of the arrest, suggesting that the applicant was already in police custody and was subsequently shown arrested in a manipulated manner. Learned counsel further submitted that while the complainant had nominated four persons in the FIR, the challan reflects an expanded list of seven accused persons, indicating afterthought and improvements in the prosecution's version. He argued that such improvements, coupled with the delay in lodging the FIR, render the prosecution case doubtful at this stage. It was further pointed out that the case is devoid of any ocular account, as there is neither any eyewitness nor any last-seen witness available to connect the applicant with the alleged offence. He further argued that the only material against the applicant is his purported confession made before the police, which, in terms of Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984, is inadmissible in evidence and carries no evidentiary value unless corroborated by independent evidence, which is lacking in the present case. As regards the alleged recovery of the weapon used in the offence, i.e., a cleaver (toka), learned counsel submitted that the said weapon had already been recovered by the CSU and was allegedly sealed at the spot by the police. However, a video clip placed on record shows a police official displaying the said weapon in an unsealed condition, thereby rendering the sealing process highly doubtful and casting further doubt on the credibility of the prosecution's evidence. In support of his contentions, learned counsel placed reliance upon the case law reported as *2024 SCMR 476*, *2024 SCMR 205*, and *2017 SCMR 116*, to argue that in cases resting on doubtful circumstances, improvements, and inadmissible evidence, grant of bail is justified.

4. Learned APG duly assisted by learned advocate for complainant vehemently opposed the grant of bail and contended that the applicant is nominated in the FIR with specific allegations of having participated in the brutal murder of the deceased, allegedly committed under the pretext of honour. She submitted that the nature of the offence is heinous and falls within the prohibitory clause of Section 497 Cr.P.C. She further argued that the material collected during the investigation, including the recovery of the alleged weapon used in the offence and other circumstantial evidence, connects the applicant with the commission of the crime.

Learned advocate for complainant maintained that at this stage, deeper appreciation of evidence is not warranted and the mere fact that certain procedural irregularities may exist does not entitle the applicant to the concession of bail, particularly in a case involving a charge under Section 302 PPC.

5. Bare reading of the FIR shows, the alleged incident to be un-witnessed one. However, without disclosing source of information, the name of applicant and two others along with an unidentified individual are introduced. Indeed, applicant is the real brother of husband of deceased and they were living together, but there is certain factual and procedural discrepancies which have been surfaced during investigation. The foremost issue pertains to the applicant's arrest and recovery of crime weapon. Learned advocate for applicant highlighted that Crime Scene Unit (CSU) Form reflects that the applicant was in police custody at 08:50 a.m., whereas the official memo of arrest shows his arrest at 2230 hours on the same day. Such a significant gap and inconsistency raise questions regarding the manner and timing of his arrest and may suggest that the applicant had been detained prior to being formally shown arrested. This undermines the credibility of the investigation and reflects possible mala fide on the part of the police. Furthermore, although four accused persons including three nominated in the FIR, but the final challan includes seven individuals as accused, thereby indicating that new names were introduced during the course of investigation. This improvement in prosecution case without plausible explanation reduces the weight of FIR and tentantively suggests embellishment, which cannot be ignored at bail stage. Additionally, there is no eyewitness account or last-seen evidence connecting the applicant to the commission of the alleged offence and to show that he was actively involved in commission of murder of an innocent lady. The prosecution appears to rely primarily on the confession allegedly made by the applicant before the police, which is inadmissible under Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984, unless duly corroborated by independent evidence, which presently appears to be lacking. Besides, yet to be determined its evidentiary value during course of trial.

6. As regards the recovery of the weapon purportedly used in the offence, i.e., the cleaver (toka), the police claim it was sealed at the place of recovery; however, a video clip of C21 News channel produced by the defence indicates that the weapon was being displayed in an unsealed condition by a police official at P.S. This discrepancy casts doubt on the

authenticity and reliability of the recovery proceedings and suggests that the process may not have been conducted in accordance with the prescribed legal requirements. These infirmities in the prosecution case, viewed collectively, bring the matter within the purview of *further inquiry* as contemplated under Section 497(2) Cr.P.C.

7. At the bail stage, the court is not required to make a deep or conclusive assessment of the evidence, but where material on record creates reasonable doubt regarding the involvement of the accused, the benefit of such doubt is to be extended even at the pre-trial stage. Reliance in this regard can be placed on *2024 SCMR 476*, wherein it has been held that where the prosecution case appears doubtful and lacks direct evidence, bail may be granted even in cases falling within the prohibitory clause. Moreover, co-accused Naqab (who had been shown as conspirator) had been admitted on bail by this court vide order dated 24.12.2024. The question of the applicant's guilt or innocence shall be determined by the trial Court after recording of evidence and conclusion of the full-fledged trial in accordance with law.

8. In light of the above discussion and in the interests of justice, I am of the view that the applicant has made out a case for the grant of bail. Accordingly, he is admitted to bail subject to furnishing his solvent surety in the sum of Rs.500,000/- (Rupees Five Hundred Thousand only) and a personal bond in the like amount to the satisfaction of the learned trial Court. It is, however, clarified that the foregoing observations are purely tentative and made only for the purpose of deciding the bail application. These shall have no bearing whatsoever on the merits of the case, which shall be determined by the learned trial Court based on the evidence brought on record during the course of trial.

J U D G E