

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 2313 of 2024

Applicant : Fahad Ahmed Ansari son of Aijaz Ahmed,
through M/s. Mirza Farooq Sultan & Malik
Waseem Hussain Awan, Advocates.

Respondent : The State
Through Ms. Rubina Qadir, DPG Sindh.

Date of hearing : 13.05.2025

Date of order : 13.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicant Fahad Ahmed Ansari seeks pre-arrest bail in a case bearing crime No.174/2023 registered at P.S. Iqbal Market, Karachi, for offences under Sections 392, 397, and 302 PPC. The applicant's earlier bail application was declined by the learned IIIrd Additional Sessions Judge, West Karachi, vide order dated 26.07.2024.

2. The prosecution theory is that on 27.06.2023 at about 08:45 a.m. at the mortuary of Abbasi Shaheed Hospital, the complainant Muhammad Jaseem Ansari recorded his statement under Section 154 Cr.P.C. He stated that he resides with his family in Orangi Town, Karachi, and runs a business, while his brother Naseem Ahmed dealt in potatoes and onions. He further stated that at about 05:45 a.m., while he was at home, received a call from Imran, informing him that Naseem had been shot and was being taken to Abbasi Shaheed Hospital. Upon reaching the hospital, Imran narrated the incident, while Naseem, Imran, and a labourer named Abdul Jabbar were about to leave for the vegetable market in a Mazda truck, an unknown individual, who had been lying outside the house, stood up, brandished a pistol, and snatched a bag containing Rs.150,000/- from Naseem Ahmed. Upon resistance, the assailant shot Naseem in the left side of the head, causing him to fall. The attacker was described as short in height, dark-complexioned, wearing a pant and shirt. Abdul Jabbar, who witnessed the incident, could identify him. The complainant accused the unknown assailant of murder during robbery and requested legal action.

3. The learned counsel for the applicant, inter alia, contended that the name of the applicant does not appear in the FIR, which was lodged against an unknown person. It was submitted that the incident was reported on the basis of hearsay, and the complainant himself was not an eye-witness. The subsequent implication of the applicant is based solely on his previous criminal record (CRO) and not on any direct or cogent identification by the witnesses. Learned counsel submitted that no identification parade was held before the concerned Magistrate as required under the law. The only identification relied upon is an informal recognition from police records, which is inadmissible in evidence. It was further argued that the prosecution case, initially based on the act of a lone perpetrator, subsequently introduced a version involving three accused persons in contradiction to the first account, without plausible explanation. The CCTV footage allegedly available at the crime scene has neither been produced nor sent for forensic analysis. No photographs or video stills have been annexed with the police report. There is no clear or specific description of the applicant in the FIR or in the statements under Section 161 Cr.P.C. Lastly, it was urged that the applicant has surrendered before the Court, has shown his willingness to cooperate with the investigation, and is not a flight risk.

4. On the other hand, learned DPG appearing for the State opposed the grant of bail but conceded that no identification parade of the accused was conducted before the Magistrate. He admitted that reliance has been placed on previous police record (CRO) and that no independent identification was secured through judicial means. He did not dispute the absence of CCTV footage or forensic corroboration on record so far.

5. Admittedly, the FIR was initially lodged against an unknown person, with no name or detailed description. The complainant narrated a second-hand account received from one purported eye-witness. The first version implicates a single assailant, while the police report later claims involvement of three persons, without reconciling this material contradiction. Despite the availability of CCTV cameras at the crime scene, no footage has been annexed with the police file nor sent for forensic examination. No photographic identification has been placed on record.

Furthermore, the applicant was not subjected to any identification test before a Magistrate. It is settled law that identification through police record (CRO) or in the presence of police officials is inherently unsafe and has no evidentiary value unless confirmed through a proper judicial identification parade.

6. In these circumstances, where the only basis for the applicant's implication is previous criminal record and where the evidence collected so far does not directly connect the applicant to the commission of the offence, the case calls for further inquiry within the meaning of Section 497(2) Cr.P.C. The accused has surrendered before this Court, which reflects his bona fides. The determination of guilt or innocence requires a full-dressed trial and deeper appreciation of evidence, which is not possible at this stage.

7. Accordingly, this bail application is allowed. The interim pre-arrest bail order dated 04.10.2024 is hereby confirmed under same terms and conditions. Accused to cooperate with investigation agency and join trial.

J U D G E