

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.721 of 2025

Applicant : Shahnawaz @ Shani son of Muhammad Saleem,
through Mr. Abdul Sattar, Advocate

Respondent : The State
through Ms. Rahat Ahsan, Addl. P.G Sindh

Date of hearing : 19.05.2025

Date of order : 23.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J.-- Applicant Shahnawaz @ Shani seeks post-arrest bail in a case bearing crime No.45/2024 registered offence under Sections 394/397/34 PPC at P.S. F.B. Industrial Area, Karachi. His earlier bail plea was declined by the learned II-Additional Sessions Judge, Central Karachi, vide order dated 28.02.2025.

2. As per prosecution theory, on 22.03.2024 at 2100 hours, the complainant, Shaban was sitting in his trailer (No. LEI-3294) near Shafiq Mor, Main Road Afzal Mill, Block-22, FB Area, Karachi, talking on his mobile phone. His cousin Ghulam Qadir was nearby, also using his mobile phone. Suddenly, two unidentified persons on a motorcycle approached them. One of the culprits demanded Ghulam Qadir's mobile phone. Upon refusal, the accused fired at Ghulam Qadir, hitting him in the hip. The culprits then snatched a VIVO touchscreen mobile phone (Model V2III, IMEI Nos. 862841058616370 & 862841058616362) and fled the scene. The injured victim was shifted to Abbasi Shaheed Hospital for treatment. Consequent upon; case was registered against unknown persons inter-alia on above facts.

3. During course of investigation, the present applicant Shahnawaz @ Shani was arrested in connection with another case for offence under Sections 353, 324, and 34 PPC. A crime empty secured from the scene of the instant offence (dated 22.03.2024) was allegedly matched with the weapon recovered from the applicant. The prosecution also claims that the applicant confessed before the police to his involvement in the present crime.

4. Learned counsel contended that the FIR was lodged against two unknown assailants without naming or describing the applicant. It is further argued that the applicant was subsequently arrested in another FIR registered under Sections 353/324/34 PPC and was later involved in the present case on the basis of a purported confession made before police officials, which per Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984, carries no legal weight. Learned counsel further submitted that; no identification parade was conducted to connect the applicant with the commission of offence; there is no recovery of snatched mobile phone or any other incriminating article from his possession; the solitary piece of forensic evidence i.e., matching of a crime scene empty with the weapon allegedly recovered is highly doubtful, especially when the empty was sent for forensic analysis on 30.03.2024 (well before the applicant's arrest on 10.05.2024); No private or independent witness was associated during recovery, despite the occurrence being in a thickly populated area, in clear violation of Section 103 Cr.P.C.; The applicant is a first-time offender with no previous criminal record and is behind bars for nearly a year without any progress in trial; The case calls for further inquiry and the applicant, being a citizen with fixed residence, does not pose any risk of absconding or tampering with the prosecution witnesses.

5. Conversely, learned APG opposed the grant of bail and submitted that although the FIR was lodged against unknown persons, during investigation the crime scene empty matched with the weapon allegedly recovered from the applicant in another FIR. He further argued that during interrogation, the applicant voluntarily confessed his involvement and that although identification parade could not be held due to his earlier production before court without muffled face, it does not reflect any flaw in the investigation. It was also contended that the applicant, along with his co-accused, not only committed robbery but also opened fire upon a resisting victim, who sustained firearm injury and remains under treatment.

6. The FIR indicates a violent robbery where a person was shot for resisting snatch of his mobile phone. The applicant's name does not appear in the FIR, which was registered against unknown persons. There is no identification parade conducted before competent Court of law, and the explanation offered, that the accused was earlier produced without covered face, though plausible, cannot by itself remedy the absence of test

identification parade, especially in a case where identity of the accused was initially unknown. As for the forensic match between the crime scene empty and recovered weapon, it is notable that the empty was sent for analysis on 30.03.2024, well before the arrest of the applicant on 10.05.2024 in another case. There is no independent witness to the recovery of weapon, nor is there any evidence that connects the applicant with the snatched mobile phone. No recovery of robbed property has been effected.

7. The only linkage at this stage is the police statement that the applicant confessed to the offence such extra-judicial confessions made to police are inadmissible unless supported by corroborative evidence, which is lacking here. It is well-settled that mere recovery of weapon, without any corroborating evidence or recovery of stolen property, is insufficient to deny bail in absence of direct connection with the offence. In reported case laws *1995 SCMR 34*, *1997 SCMR 412* & *2022 SCMR 1304*, the Hon'ble Supreme Court reiterated that where an accused is roped in solely on the basis of alleged confession without any judicial corroboration or recovery of robbed property, the case becomes one of further inquiry.

8. Nonetheless, the fact cannot be overlooked that the FIR alleges a serious offence where a robbery was committed with wanton use of firearms, resulting in injury to a bystander. Increasing incidents of street crimes and armed robberies in urban areas like Karachi, particularly involving brazen firing by motorcyclists upon resistance, have created an alarming law and order situation, and public confidence in enforcement agencies is dwindling. Assailants frequently act with impunity, endangering not just property but precious lives. Such conduct must be treated with appropriate seriousness, especially where firearm injuries are caused. However, even in such grave cases, the constitutional guarantee of due process under Article 10-A must be upheld. The applicant has remained in custody since May 2024; trial has not commenced meaningfully; and no convincing material, apart from alleged police confession and forensic match of dubious evidentiary value, has been produced.

9. In view of the above, while the nature of offence is serious and calls for due prosecution, the available material falls short of establishing a *prima facie* case against the applicant at this stage. The case requires further inquiry as envisaged under Section 497(2) Cr.P.C. Accordingly, the

applicant/accused Shahnawaz @ Shani is admitted to post-arrest bail, subject to furnishing surety in the sum of Rs.100,000/- (Rupees One Lac only) and a P.R. bond in the like amount to the satisfaction of the trial court.

10. Needless to mention, the observations made herein are tentative in nature and shall not prejudice the trial court in deciding the matter on merits.

J U D G E