

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application Nos. 295 & 38 of 2025.

Applicant in 295/2025: Asif Gul Masih son of Anwar Gul Masih
Through Mr. Raja Muhammad Nasir, learned
advocate for accused in Cr. BA No.295/2025

Applicant in 38/2025 : Syed Abu Bakar Hassan Shah
Through Mr. Sardar Salman Ishaque, advocate for
the applicant in Cr. B.A No. 38 of 2025

Complainant : Through Mr. Naseer Nehal Hashmi, advocate

The State : Through Ms. Rubina Qadir, DPG
A/w I.O/SIP Ghulam Shabbir.

Date of hearing : 27.03.2025

Date of order : 02.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – These criminal bail applications stemming from a case bearing crime No. 419 of 2023 registered at Police Station Ferozabad, Karachi, for offences punishable under Sections 365, 302, 34 PPC. Earlier, bail applications filed by the applicants were declined by the learned Additional District and Sessions Judge, Karachi East, through separate orders.

2. As per FIR registered by complainant Syed Mehar Ali Shah Advocate, his father, Dr. Syed Raham Ali, serving with SSGCL departed from his residence on 06.07.2023 at about 1900 hours in his white Honda City Car bearing Regd. No. BMT-842 (Model 2018), equipped with a TPL Tracker. At about 1936 hours, his father made a last telephone call to his friend, Dr. Naseer Bhutto, and his last location, traced through his mobile phone, was near Noorani Kabab, Shahrah-e-Quaideen, Block-2, PECHS, Karachi. Subsequently, his phone was switched off. On 07.07.2023, TPL Tracker informed the complainant telephonically that the vehicle was located at C-51 Lyari Basti, Surjani Town, leading to registration of the case.

3. During the course of investigation, it was revealed by Dr. Naseer Bhutto that the deceased had recently befriended an unknown female. The deceased had sent Bhutto a WhatsApp message allegedly from this girl, asking him to meet her at Kababjee Restaurant. Contrary to the contents of the FIR, it emerged that the deceased's car was recovered on 09.07.2023 from two individuals, Kareem and Zohaib, who disclosed that the car was handed over to them by Sarmad Siddiqui. Subsequent investigation led to the arrest of Sarmad Siddiqui's wife and brother, Shahnawaz. Sarmad Siddiqui and Shahnawaz emerged as the principal accused.

During investigation, the arrested accused confessed that the deceased was lured through one Sania (later arrested), who in her confessional statement recorded under Section 164 Cr.P.C., admitted that she entrapped the deceased via a dating application and later handed him over to Shahnawaz and fifteen others, including the present applicant Syed Abu Bakar. Thereafter, the deceased was maltreated and died as a consequence.

4. The role assigned to the present applicant Asif Masih is that he received the dead body from Shahnawaz and others and, along with his wife Mst. Nusrat Kanwal (a nurse), transported it in his ambulance to the Civil Hospital Karachi. After leaving the dead body at the hospital, they absconded. The role attributed to applicant Abu Bakar is that he administered alcohol to the deceased, participated in the assault, and is involved in the events leading to the death.

5. It is pertinent to mention that co-accused Syeda Hina Zaidi, Syed Zeeshan Zaidi (Cr. Bail Application No.2157/2023), Ashfaq Ahmed (Cr. Bail Application No.2758/2023), and Zohaib s/o Inayat Ali Bawani (Cr. Bail Application No.2903/2023) have been granted bail by this Court on distinguishable facts.

6. Learned counsel for applicant Asif Masih argued that he has been falsely implicated and has not been attributed the role of beating or maltreating the deceased; his alleged act is limited to shifting the dead body to the hospital. It was contended that there is no direct evidence, including CCTV footage, conclusively showing him shifting the body, and that assessment of such evidence at bail stage would amount to deeper appreciation, which is impermissible. It was further submitted that statements of co-accused Hina Zaidi and Zeeshan Zaidi, who have been granted bail, do not implicate the present applicant. He prayed for grant of bail.

7. Learned counsel for applicant Abu Bakar contended that the applicant is a young chap aged about 19 years; that no cash or ATM card was recovered from him; that the confessional statements of co-accused are inadmissible under Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984; that there is no CCTV footage from the bank showing the applicant attempting withdrawal; and that the exculpatory statement recorded under Section 164 Cr.P.C. does not assign any specific incriminating role to him. He also prayed for bail.

8. Conversely, the learned Additional Prosecutor General for the State, assisted by learned counsel for the complainant, vehemently opposed the bail applications, arguing that the roles of both applicants are distinguishable from those of the co-accused who have been granted bail. It was emphasized that applicant Asif Masih, along with his wife, actively participated in concealing the

crime by taking the deceased to the hospital and abandoning the body, which act is corroborated through unedited CCTV footage, duly verified by the Punjab Forensic Science Agency. Regarding applicant Abu Bakar, it was argued that subsequent investigation revealed that the deceased's ATM card was used for withdrawal of cash, and that no malice or animosity against him by the complainant or investigating agency has been shown.

9. The tentative assessment of record reflects the applicants are not nominated in the FIR, while material has surfaced against them during the course of investigation, hence the impression of false implication is overruled. Apart from this, the role of applicant Asif Masih is shown for receiving the injured, transporting and then abandoning the deceased's body at Civil Hospital, while the role of applicant Abu Bakar is regarding administration of alcohol, beating and unlawful withdrawal of money using the deceased's ATM card. Suffice it to say that both of their roles are conjectured with the tangible evidences and both applicants are alleged to have acted in furtherance of common intention along with the principal offenders, culminating in the death of an innocent person.

10. Applicant Asif Masih was arrested on 14.07.2023 after five days of the alleged incident of death, as such Asif Masih did not make any report or complaint to the police station, informing about the incident, but such omission is an aiding in screening the principal offenders, squarely attracts the mischief of Sections 201/202 PPC read with section 34 PPC of main crime u/s 302 PPC. Therefore, such omission on the part of applicant prima facie shows his involvement in committing a non-cognizable offence.

11. The allegations against the present applicants are further supported by documentary evidence, forensic analysis, CCTV footage and witness statements. Their roles are active, distinct, and dissimilar to those of the co-accused who have been enlarged on bail. The offence with which the applicants are charged falls within the prohibitory clause of Section 497(1) Cr.P.C., carrying capital punishment. Thus, no case for grant of bail on the ground of parity or otherwise is made out.

12. Keeping in view the above facts and circumstances, prima facie applicants have failed to make out case for further inquiry, as envisaged under Section 497(2) Cr.P.C. Accordingly, bail applications stand dismissed.

13. Before parting with this order, it is noted with serious concern that the Investigating Officer, SIP Ghulam Shabbir Dahri, has grossly failed to perform his legal duties diligently. He omitted to secure and collect vital pieces of evidence, such as the recovery and record of the ambulance used in the offence,

its ownership details, the ownership and occupancy record of the premises where the deceased was confined, the employment records of co-accused Mst. Nusrat Kanwal from Jinnah Hospital, the Call Detail Records (CDRs) of all accused persons, inactions in inserting the penal provisions and other substantial documentary and forensic materials that were readily accessible during the course of investigation. Such serious lapses have undermined the investigation's integrity. Accordingly, the Inspector General of Sindh Police is directed to initiate stern departmental action against the said Investigating Officer. A copy of this order be transmitted to him for compliance.

14. Needless to say that the above assessments are tentative in nature and shall not affect the merits of trial.

J U D G E