

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS**

**Criminal Bail Application No.S-213 of 2024**

Applicant/ accused: Danish s/o Talib Makrani  
Through Mr. Khuda Bux Panhwer, Advocate.

The State: Through Mr. Ghulam Abbas Dalwani, D.P.G.

Complainant: Mst. Razia wd/o Muhammad Ramzan Khokhar,  
Through Mr. Afzal Karim Virk, Advocate.

Date of hearing: 11.06.2025

Date of order: 11.06.2025

**ORDER**

**Jan Ali Junejo, J.** – Through this Criminal Bail Application filed under Section 497 Cr.P.C., the applicant Danish S/o. Talib seeks his release on post-arrest bail in Crime No.122 of 2023 registered at P.S. Kunri, District Umerkot, for offences punishable under Sections 302, 201, and 34 PPC. The Applicant's earlier post-arrest bail plea was dismissed by the Court of learned Additional Sessions Judge-I, Model Criminal Trial Court, Umerkot, vide order dated 31.05.2024.

2. Briefly stated, the facts narrated in the FIR indicate that it was lodged by Mst. Razia, widow of Muhammad Ramzan, at Police Station Kunri on June 27, 2023. The complainant alleged that her brother, Ghulam Nabi (aged 35-36 years), had been married to Shahnaz, daughter of Moharam Khokhar, for approximately six months. However, he maintained strained relations with his in-laws, including his mother-in-law Gul Bano, wife Shahnaz, brother-in-law Mahar Ali, and sister-in-law Gul Naz. On June 21, 2023, at approximately 10:00 PM, Ghulam Nabi informed the complainant and their brother Pervez of his intention to visit his in-laws' residence, after which he departed. He failed to return the following day. The complainant, accompanied by Pervez and another brother, Ghulam Mustafa, subsequently visited Gul Bano's residence. Therein, they encountered Gul Bano and other family members but received

only vague and evasive responses concerning Ghulam Nabi's whereabouts. A formal missing person report was thereafter filed at the police station, and search efforts continued. Subsequently, the complainant ascertained that her brother had been murdered by Gul Bano, Shahnaz, Gul Naz, Mahar Ali, and an unidentified individual, who thereafter concealed the deceased's body.

3. Learned counsel for the applicant/accused submitted that the applicant has been falsely implicated in the case with malafide intent and ulterior motives, as he is neither nominated in the FIR nor was his name disclosed during the initial stages of the investigation. He contended that there is an unexplained delay of six days in the lodging of the FIR, and no plausible reason has been offered by the complainant for such delay, which casts serious doubt on the credibility of the prosecution story. He further contended that the incident is admitted to be unwitnessed and there is no direct, independent, or corroborative evidence connecting the applicant with the commission of the alleged offence. It is further argued that the only material against the applicant is the confessional statement of co-accused Mehar Ali recorded under Section 164 Cr.P.C., which, according to settled principles of law, is not admissible against a co-accused. It is further argued that no recovery has been made from the applicant, nor is any specific role attributed to him except an unverified implication made by the co-accused. Learned counsel further argued that the applicant is behind bars, no longer required for investigation, and poses no risk of absconding or tampering with prosecution evidence. He emphasized that the case against the applicant requires further inquiry as per Section 497(2), Cr.P.C. Lastly, the learned counsel prayed for grant of bail.

4. Learned counsel for the complainant strongly opposed the bail application, arguing that although the applicant's name does not appear in the FIR, his active role in the planning and execution of the offence surfaced

during the judicial confession of co-accused Mehar Ali, which was recorded voluntarily under Section 164 Cr.P.C. He contended that the applicant not only participated in the planning to kill the deceased but also provided the intoxicating substance to render the victim unconscious before the fatal act of strangulation. According to the complainant's counsel, this confession is credible, detailed, and sufficiently corroborated by the recovery of the deceased's dead body from the premises of co-accused Mehar Ali, thereby forming a chain of circumstantial evidence linking the applicant to the crime. He further asserted that the heinous nature of the offence, which carries capital punishment, excludes the applicant from the beneficial provisions of bail.

5. The learned DPG, while adopting and reinforcing the arguments advanced by the complainant's counsel, submitted that the delay in lodging the FIR has been reasonably explained, as the complainant was initially unaware of the murder and was actively searching for her missing brother. He emphasized that the confessional statement of co-accused Mehar Ali under Section 164 Cr.P.C. was made voluntarily before the Magistrate and contained detailed disclosures implicating the present applicant in supplying the intoxicant and participating in the actual murder by strangulation. He further submitted that the recovery of the dead body from the co-accused's premises serves as strong corroborative evidence supporting the confession and connecting the applicant to the crime. The learned DPG argued that the nature of the offence, which is punishable under Section 302 PPC, falls within the prohibitory clause of Section 497(1), Cr.P.C., thereby disentitling the applicant from concession of bail. He prayed for dismissal of the bail application, contending that sufficient material exists on record to establish prima facie involvement of the applicant in the commission of the offence.

6. I have heard the arguments advanced by the learned counsel for the applicant, the learned counsel for the complainant, and the learned Deputy Prosecutor General for the State. I have carefully reviewed the material on record and conducted a tentative assessment, as permitted at the bail stage under established legal principles. Upon examining the record, it appears that the Applicant was not nominated in the FIR. The only evidence against the Applicant is the confessional statement of co-accused Mehar Ali, recorded under Section 164 of the Code of Criminal Procedure (Cr.P.C.), which alleges that the Applicant, in collusion with Mehar Ali, administered intoxicants to the deceased. It is a well-established principle of law that a co-accused's confession is not considered substantive evidence. In accordance with Article 43 of the Qanun-e-Shahadat Order, 1984, such a confession can only be regarded as "circumstantial evidence". Consequently, it cannot be relied upon exclusively for conviction or denial of bail without corroboration from independent and cogent evidence. For reference, Article 43 of the Qanun-e-Shahadat Order, 1984, states as follows:

***"43. Consideration of proved confession affecting person making it and others jointly under trial for same offence. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons is proved, —***

***(a) such confession shall be proof against the person; making it; and***

***(b) the Court may take into consideration such confession as circumstantial evidence against such other person.***

***Explanation.— "Offence", as used in this Article, includes the abetment of, or attempt to commit, the offence".***

A straightforward reading of the aforementioned legal provision indicates that when multiple individuals are tried together for the same offense, a proven confession made by one of the culprits constitutes direct evidence against that individual. This admission of guilt can be utilized to

establish the confessor's culpability in the crime. Furthermore, the Court may consider this confession as "circumstantial evidence" against the co-accused involved in the trial. In this context, while the confession directly implicates the person making it, it can also support inferences regarding the involvement of others based on the surrounding circumstances and details provided in the confession. Additionally, the term "offense" encompasses not only the principal crime but also any acts of abetment or attempts to commit the crime. In such circumstances, a confession made by a co-accused cannot, on its own, serve as sufficient evidence to secure a conviction. It is essential to have independent corroborative evidence that supports the confessional statement. This principle was reiterated by the Honorable Supreme Court of Pakistan in the case of ***Muhammad Sarfraz Ansari v. The State and others (PLD 2021 Supreme Court 738)***. The Apex Court held that: "No doubt, as per Article 43 of the *Qanun-e-Shahadat Order, 1984* when more persons than one are being jointly tried for the same offence and a confession made by one of such persons admitting that the offence was committed by them jointly, is proved, the court may take into consideration the confessional statement of that co-accused as circumstantial evidence against the other co-accused(s). However, this Court has, in several cases, held that conviction of a co-accused cannot be recorded solely on the basis of confessional statement of one accused unless there is also some other independent evidence corroborating such confessional statement. The principle ingrained in Article 43 of the *Qanun-e-Shahadat* is applied at the bail stage and the confessional statement of an accused can lead the court to form a tentative view about *prima facie* involvement of his co-accused in the commission of the alleged offence; but as in the trial, at the bail stage also, the *prima facie* involvement of the co-accused cannot be determined merely on the basis of confessional statement of other accused without any other independent incriminating material corroborating the confessional statement".

7. Further, the medical board report, chemical examiner's report, and DNA analysis report do not reflect the presence of any poison or intoxicant in the body of the deceased . Moreover, no recovery of any intoxicant or narcotic substance has been effected from the possession of the applicant. The dead body of the deceased was recovered from the premises of co-accused Mehar Ali solely on his own pointation, and no evidence, direct or circumstantial, has been brought on record to connect the applicant with such recovery. Apart from the unverified implication by the co-accused, no independent witness, forensic evidence, or investigative material has emerged which may directly or indirectly connect the present applicant with the planning or execution of the alleged offence. It is also significant to observe that the judicial confession of the co-accused is yet to be tested through the crucible of cross-examination at the trial stage, and as such, cannot be treated as definitive proof at this pre-trial stage. Given the circumstances discussed, the case against the applicant appears to be tentative and falls within the ambit of Section 497(2), Cr.P.C., which provides for the grant of bail where further inquiry into the accused's guilt is warranted. The law favours bail in such cases, particularly where the accused is not named in the FIR and the available evidence does not establish reasonable grounds to believe that he has committed the alleged offence. Under Section 497(2), Cr.P.C., bail becomes a statutory right when the material on record raises doubt rather than certainty regarding the accused's involvement. It is well-settled that at the bail stage, the Court need not look for sufficient incriminating material but must assess whether there are reasonable grounds for belief or whether the case calls for further inquiry. In this regard, reliance is placed on the judgment of the Honourable Supreme Court of Pakistan in *Hussain Ahmed v. The State and another (2021 SCMR 1263)*.

8. In view of the above, the applicant Danish S/o Talib is admitted to post-arrest bail, subject to his furnishing a solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand only) and a Personal Recognizance Bond in the like amount to the satisfaction of the learned trial Court. It is further clarified that the observations made herein are tentative in nature and are restricted solely to the adjudication of this bail application. The trial Court shall decide the case independently, on the basis of evidence brought before it, without being influenced by any observation made in this order. These shall constitute the detailed reasons for the short order announced on 11-06-2025.

**JUDGE**

*\*Saleem\**