

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application No.1425 of 2024
Cr. Bail Application No.2058 of 2024

Date	Orders with Signatures of Judges
For hearing of bail applications	

21.05.2025.

M/s. Shahzeb Akhtar Khan and Khawaja M. Bilal, Advocates for applicant in Cr. BA No.1425 of 2024

Mr. Muhammad Rafi Muzni, Advocate for applicant in Cr. BA No.2058 of 2024.

Mr. Raja Mir Muhammad, Advocate alongwith complainant
 Ms. Seema Zaidi, APG alongwith I.O. Inspector Naseem Farooqui.

Applicants Muhammad Umar, Sarfaraz, Sajjad and Khan Zaman seek post arrest bail in crime No.464/2023 under Sections 395, 397, 302 PPC registered at PS Surjani Town, Karachi. Earlier, their bail applications were discarded by the trial Court vide orders dated 10.06.2024 and 31.07.2024.

Brief facts as narrated in the FIR are that complainant's brother Naseem used to supply Milk at shops. On 14.5.2023 he alongwith his friend Babar Tanveer went in a car to recover dues from North Nazimabad. At about 02.08 am Naseem called his friend Babar Ali that he will be free in sometime and will meet him. However, at about 04.56 a.m complainant's son informed him that Naseem and his friend Babar Tanveer were shot dead in Surjani and their dead bodies are lying in Abbasi Shaheed Hospital. Complainant reached the Hospital where relatives of Babar Tanveer informed that complainant's brother alongwith his friend were returning home after having recovery of Rs.23,00,000.00, kept in a sack on the back seat of the car, and when they reached Surjani near Cambridge School street, accused on two motorcycles on gunpoint snatched the money bag and on resistance they were shot dead.

Learned counsel for the applicants submit that they are innocent, not named in the FIR and malafidely implicated in instant case on the basis of statement of prosecution witness. They further argued that there is no eyewitness of the incident and no direct or indirect piece of evidence has been collected during investigation against the applicants except extra judicial confession and under Articles 38 and 39 of the Qanun e Shahadat, 1984 the same is in

admissible piece of evidence. Learned counsel pointed out that co-accused Nasrullah, Nasir, Mansha aka Kashif, Abdul Qadeer aka Boota Siraiki and Abdullah have been granted post arrest bail by this Court and case of the present applicants is on same footing, therefore, following the rule of consistency the applicants are entitled to be enlarged on bail. Per learned counsel statement of PW Nayab Fatima was recorded after six months of the incident while no incriminating article was recovered from their possession.

Conversely, the learned counsel for the complainant and APG opposed the grant of bail to the accused persons on the ground that in instant case on account of faulty and dishonest investigation previous I.O. was dismissed from service and subsequent I.O. conducted investigation and recovered one 30 bore pistol from applicant Khan Zaman. He further submitted that after change of investigation the accused persons on the CDR and forensic evidence have been arrested.

Heard learned counsel for the applicants, complainant, APG and perused the material available on record. The FIR is registered against the unknown persons, who snatched the money bag from the deceased and killed them. In instant case, the first I.O. on account of dishonest and partial investigation was dismissed from the service and the third I.O. after collecting evidence in the shape of CDR etc arrested the applicants and submitted challan. Perusal of the record shows that during investigation the I.O. noted bullets marks in the shop of Aijaz, brother of Muhammad Umar, Sarfaraz and Sajjad and said Aijaz is absconder. During investigation the third I.O. unearthed the conspiracy hatched by Aijaz, who is mastermind of the alleged incident alongwith his brothers and they hired Khan Zaman who committed murder of the deceased and crime weapon has been recovered from his possession. Present applicants have made extra judicial confession before the police. It is settled proposition of law that confession or statement of co-accused before police is an inadmissible piece of evidence in terms of Articles 38 and 39 of the Qanun-e-Shahadat Order but under Article 40 of Order, if confession of accused or statement given by the accused has led to discovery of new facts which were not known to the police and said new facts connect the accused with the crime then such statement can be used against him.

It further revealed during investigation that firstly murder was committed and then dead bodies of deceased were placed in car which was brought at the place of alleged incident and then fires were shot to camouflage the alleged incident as that of robbery or dacoity and in the supplementary challan the I.O. added Sections 114 and 201 PPC. This is a double murder case where two innocent persons were killed for conspiracy hatched to grab money and business. During investigation police recovered pistol from Khan Zaman. The alleged offences fall within the prohibitory clause of Section 497 Cr.P.C. In my opinion the I.O. has collected sufficient evidence against the present applicants and their case with that of co-accused who were earlier admitted by this Court on bail is quite different.

The Honourable Supreme Court in the case of Mst. ASKAR JAN and others versus MUHAMMAD DAUD and others (2010 SCMR 1604) has held as under:-

“9. Having heard the learned counsel for the parties, learned Deputy Prosecutor-General and perusing the record of the case with their assistance, we find that the appellant Muhammad Daud was convicted by the High Court on the evidence of discovery of dead body and blood stained bailchas on his information. The discovery of any fact on the information of the accused in custody of Police is admissible under Article 40 of Qanun-e-Shahadat Order, 1984 (hereinafter referred to as 'the Order'), which reads as under:-

"40. How much of information received from accused may be proved. When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

It has also come on record that after trial Court has examined some of the prosecution witnesses and trial is in progress. Trial Court is directed to conclude the trial expeditiously preferably within a period of six months without getting influenced by the observations made herein above which are tentative in nature.

For the foregoing reasons, I do not find any merits in the two bail applications, which are accordingly dismissed.

Judge