

N THE HIGH COURT OF SINDH AT KARACHI

Present: Mr. Justice Jawad Akbar Sarwana

Criminal Bail Application No. No.1537 of 2025

Applicant : Muhammad Umer @Umer s/o
Muhammad Abdul Ghaffar through
Muhammad Shafique Advocate

Respondent : The State through Mr. Tahir Hussain
Mangi, APG Sindh

Date of Hearing : 03.09.2025

Date of Decision : 09.10.2025

FIR
No.389/2024
U/s: 395 PPC
P.S. Khawaja Ajmair Nagri,, Karachi.

ORDER

Jawad Akbar Sarwana, J.: Through this post-arrest bail application, the applicant/accused, Muhammad Umer @ Umer s/o Muhammad Abdul Ghafoor, seeks bail in FIR No.389/2024 registered under Section 395 PPC at P.S. Khawaja Ajmair Nagri, Karachi. Earlier, the bail application filed by him in BA No.1668/2024 in the Court of the IInd Additional Sessions Judge, Karachi Central (“the trial Court”), was dismissed vide Order dated 27.05.2025.

2. I have heard the applicant/accused Counsel, the Additional Prosecutor General, Sindh, and have perused the record, and my observations are as under:-

3. From the perusal of the FIR No.389/2024, and the record available on file, the case of the prosecution is that, three accused, namely one adult, Abdul Rehman and two juveniles, Muhammad Arif and Khan Muhammad, allegedly committed dacoity of Rs.70,000 and theft of mobile phones from the friends of the complainant (Fahad), namely, Asif Hussain, Amar, Lashari and Arsalan, allegedly on gun-point near North Karachi. The accused, Muhammad Umer, was also reportedly involved in the crime, and, according to the prosecution, all

the accused were positively identified to be present at the scene of the crime.

4. The Counsel for the applicant/accused submitted that there was a delay in filing the FIR, and the accused applicants, as per the FIR, were “na maloom afraad”. Further, there was no reason to believe that the accused were five (5) in number, and it was merely an attempt on the part of the law enforcement to bring the crime within the contours of Section 395 Cr.P.C., which involves life or rigorous imprisonment for a term of not less than four years and not more than ten years, along with a fine. Counsel contended that even if this were assumed to be true, only four persons were identified, and the fourth accused was yet to be found. He claimed that because the accused were in police custody as a result of being charged/investigated in a different FIR, the law enforcement wrongfully implicated them in this crime. Finally, he contended that the identification of the accused was deeply flawed, as the eyewitnesses had already seen the accused before they were brought in for the identification parade. Finally, the two accused had been granted bail; therefore, following the principle of consistency, the accused/applicant was also entitled to the concession of bail.

5. Heard Counsel and APG, and I have perused the material available in the criminal bail application and the police file, too. At the outset, the documents available on record reveal that the accused/applicant had been in police custody in a different FIR, namely, FIR No.301/2024, when the two witnesses/victims, Fahad (also the complainant of the FIR) and Asif, while visiting P.S. New Karachi (a totally different P.S. from the one where the FIR No.389/2024 was registered – the P.S. was Khawaja Ajmair Nagri, Karachi, then), identified the accused on 04.08.2024 and nominated him for the first time as per the Section 161 Statements. Thereafter, when the identification parade took place on 08.08.2024, it was Amir

Hussain, s/o Muhammad Ishag, one of the five eyewitnesses/victims allegedly present at the scene of the crime, who identified the accused persons, including the applicant/accused. The eyewitness in the identification parade was a different eyewitness from the first set of two eyewitnesses who had identified the accused/applicant earlier at the P.S. Therefore, the applicant/accused's contention that the two eye-witnesses/victims who identified the accused/applicant had an opportunity to see the same accused/applicant before the identification parade and were the same, strictly speaking, does not hold water (although there is another aspect discussed herein below). The record shows that the accused/applicant was identified by a different victim in the identification parade from the two (complainant and another victim) who identified the same accused/applicant in police custody at the Police Station, a few days earlier. Accordingly, the two judgments of the Supreme Court of Pakistan cited by the Counsel for the accused/applicant concerning the identification parade reported in Kanwar Anwaar Ali Special Magistrate: In the matter of: PLD 2019 SC 488, and Subha Sadiq v. The State, 2025 SCMR 50, are entirely distinguishable on the facts and do not apply to the case, when deciding this post-custody bail application.¹

6. I now come to another aspect to the identification parade. In the Supreme Court of Pakistan's judgment reported in Naveed Sattar v. The State and Others, 2024 SCMR 205, the Apex court observed that when the identification parade was conducted after the complainant nominated the petitioner, then, in these circumstances, the sanctity of the test identification parade, prima facie, may open the door to further inquiry. In the case of Mazhar Ali v. The State and Another, 2025 SCMR 318,² the Supreme Court of Pakistan observed that:

¹ Another authority on identification parade, relied upon by the Counsel for the accused/applicant, which is also not relevant, is Javed Khan alias Bacha and Another, v. The State and Another, 2017 SCMR 524.

² This case is also reported in PLJ 2025 SC (Cr.C.) 60.

“It is further noteworthy that Mazhar Ali, petitioner, along with his two brothers namely Zulfiqar Ali alias Bhutto and Riaz Ali was nominated in the FIR, therefore, the evidentiary value of the prosecution evidence qua identification of the petitioner during identification parades after his nomination in this case requires further probe and inquiry entitling the petitioner to the grant of post-arrest bail. Reference in this context may be made to the case of Naveed Sattar v. The State (2024 SCMR 205) wherein post-arrest bail was granted to the accused of the said case in almost identical circumstances, while inter alia observing in paragraph no.5 of the said judgment as under:

‘This is that the identification parade was conducted after the petitioner’s nomination by the complainant, and, in such circumstances, prima facie, the sanctity of such a test identification parade is open for determination.’ ”

7. In the present case, the accused/applicant was not identified/nominated in the FIR, but was subsequently identified by the eyewitnesses/victims. The applicant/accused was apparently unknown to the eyewitnesses/victims at the scene of the crime and when reported to the Police. The accused/applicant, along with the rest of the accused, was nominated under Section 161 Cr.P.C. statements of Fahad (the complainant/victim) and Asif (victim), respectively, recorded in front of the police in FIR No. 389/2024. Essentially, and arguably, this met the first condition of the two cases in Naveed Sattar (supra) and Mazhar Ali (supra), i.e. the identification parade was conducted after the accused/applicant’s nomination by the complainant. The two eyewitnesses, Fahad and Asif, the complainant/victim and victim, respectively, identified the applicant/accused, Muhammad Umer, and nominated him before the identification parade. It may be noted that the accused/applicant was not nominated in the crime by name in the FIR, which was already registered on 27.07.2024. The first nomination by name in the FIR was made as per Section 161 Cr.P.C. statements and confirmed by, Fahad,

the victim/complainant's statement and Arif, another victim's statement on 04.08.2024. This was before the identification parade on 08.08.2024. The identification parade had yet to take place. Meanwhile, the five (5) eyewitnesses, which included the complainant, now had the opportunity to confer, discuss with each other and describe the accused/applicant to each other before the identification parade took place. Although the complainant/victim and another eyewitness/victim who identified the accused/applicant in the Section 161 Cr.P.C. statements were different from the one who identified the accused/applicant in the identification parade, in the circumstances, prima facie, the identification parade was conducted after the accused's nomination by the complainant/victim. Therefore, the sanctity of such a test identification parade requires further probe and inquiry, entitling the accused/applicant to the grant of post-arrest bail. Notwithstanding the foregoing, the police papers show that the counsel for the complainant/eyewitnesses/victims was also present at the time of the identification parade and recorded his objections, when the protocol in such cases is that he should not have been present. It appears that the protocol was not followed. The bottom line is that, the mode and manner of the identification parade does not inspire confidence, particularly when the FIR was lodged against "na malooma fraad", which, in the facts and circumstances of the case, triggers a need for further inquiry and merits consideration as one of the points for the concession of bail to the accused/applicant.

8. The alleged incident took place on 27.07.2024, but it took the complainant/eyewitness/victim, who also alleged that the crime involved five accused, seven (7) days before one of the five victims of the crime registered FIR No.389/2024, on 03.08.2024. No explanation is provided for the delay in filing the FIR. Out of the five (5) eyewitnesses, only one (1) stepped forward as the complainant to lodge the criminal complaint. Furthermore, as per the timing of filing the FIR, the said FIR was registered at P.S. Khawaja Ajmair Nagri,

Karachi, on 03.08.2024, when the accused/applicant was already in police custody in P.S. New Karachi in connection with FIR No. 301/2024 at the time. Thereafter, on the very next day, two of the five witnesses also proceeded to P.S. New Karachi to identify the accused, not at P.S. Khawaja Ajmair Nagri but at P.S. New Karachi, where the accused/applicant was being held in police custody. All these events, including the timeline of how the accused was identified and the delay in filing the FIR, require further inquiry.

9. Last but not least, nothing has been recovered from the applicant/accused. Yet, the prosecution has submitted in the lower forum, and once again before this bench, that the accused/applicant is involved in crimes of a similar nature and is charged in several FIRs. Prosecution's submission is not persuasive. The Supreme Court of Pakistan, in an unreported judgment dated 09.07.2025, in the case of Crl. P.L.A.No.745 of 2025, Abid v. The State through Prosecutor General Punjab and another, has observed that:

“...[t]he mere statement of the learned APG that the petitioner is involved in some other similar cases also does not hold water, for the reason that nothing was produced before us by the IO or the learned APG for our consideration to this end. . . .”

10. In view of the above, the accused/applicant, Muhammad Umer s/o Abdul Ghafoor, is granted bail subject to furnishing solvent surety in the sum of Rs. 100,000/- [Rupees One Lac only] along with P.R. Bond in like amount to the satisfaction of the trial court.

11. Needless to state that the observations herein are tentative and nothing herein shall be construed to prejudice the case of either side at trial.

12. Post-arrest bail is allowed in the above terms.

J U D G E