

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Bail Application No.S- 34 of 2025.

Applicant: Natho Mal s/o Easar Mal.
Through Mr. Bhoro Bheel, Advocate.

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

Date of hearing: 19.03.2025.

Date of order: .03.2025.

ORDER

Dr. Syed Fiaz ul Hasan Shah, J: The Applicant Natho Mal son of Easar Mal seeks his admission to post arrest bail in Crime No.215 of 2024 under section 302, 120-B, 34 PPC registered with P.S Umerkot City. After the arrest applicant preferred his bail plea before the Court of Sessions Judge Umerkot vide Criminal Bail Application No.02/2025 (Re-Natho Mal Vs. The State) and same was dismissed vide order dated 08.02.2025; hence, instant bail application has been maintained.

2. The brief facts of the prosecution case are that on 30-10-2023. On that day, the complainant and his father sold their Alto car to Jummon Rahimon for Rs. 32,50,000/-. An agreement (No. 954, dated 30-10-2023) was made, which stated that the remaining amount of Rs. 22,50,000/- was to be paid by 01-11-2024. However, on the due date, Jumoon Rahimon failed to make the payment. The complainant informed Rahimon's friend, Dil Karar Mari (resident of Bhit Bhaiti), about the situation, and he assured that the remaining amount would be paid. On 05-11-2024, at approximately 10:00 AM, the complainant,

along with his father, uncle Shahid, and Asif, traveled from Umerkot to Bhit Bhaiti in their car to meet Dil Karar Mari. They reminded Mari about the outstanding payment from Jumoon Rahimon, and he assured them that Rahimon would settle the amount. Mari then left and returned with a gun and a bag. The group then headed back to Umerkot, arriving at Jumoon Rahimon's house on Ratnor Road around 04:30 PM, where they found Jumoon Rahimon (son of Karim), Liaquat (son of Jummon), and an unidentified individual in Jumoon Rahimon's room. Dil Karar Mari sat next to Jumoon, while the complainant's father sat opposite him, and the complainant and others sat on the side chairs. The complainant's father demanded the remaining payment, which caused Jumoon to become angry. The unknown individual locked the door, and Jumoon Rahimon took the gun from Dil Karar Mari, loaded it, and aimed it at the complainant's father with the intent to kill him. The father attempted to defend himself, causing the gun's barrel to lower. However, the gun fired, and the bullet struck the father in his left knee. He screamed in pain and collapsed. As the complainant and others stood up, Liaquat Rahimon pulled out a pistol and threatened to kill all of them, if they did not sit down. Fearing for their lives, they complied. The complainant's father lost consciousness due to severe blood loss. The accused then unlocked the door, left the room, and got into a vehicle. They drove away toward the city. The complainant then took his father to the Civil Hospital in Umerkot, where doctors confirmed his death. The incident was reported to the police, who arrived, completed the necessary documentation, and conducted a post-mortem. The body was then taken for funeral rites the following day. Due to the arrival of guests, the ceremony was delayed. The complainant is now submitting this complaint, stating that the accused had premeditated the crime,

confined them, and ultimately caused the murder of his father. The complainant requests that justice be served."

3. The Applicant states that the manner in which the present incident has taken place is highly doubtful and improbable as a murder case. He further stated that the FIR has lodged after delay of 02 days without any plausible explanation of delay and with complete consultation. He further stated that his name is not appearing in the FIR or even in the interim challan and he is poor taxi driver and the police has falsely implicated him.

4. The learned DPG strongly opposed the bail application. He contended that incident was taken place on 05-11-2024 and though FIR was lodged on 07-11-2024 but the delay is well explained. He further contended that 17 empty cartridges of cartos were recovered from the crime scene and within time period these were sent for Forensic. He stated that no malafides has alleged against the prosecution and the name of accused has disclosed by the co-accused Dilbar. He further stated that ocular account connects the Accused for commission of crime in view of three prosecution eye-witnesses.

5. As per prosecution case, the complainant and his father has sold vehicle Alto Car to one Jummon Rahimoon (now accused) and the Accused committed default in payment consideration amount which is also reduced in writing. Being worry for their money, the Complainant and his father approached friend of Jummon Rahimoon namely Dil Karar Mari who assured to get recover the amount from Jummon Rahimoon who is close friend of Dil Karar Mari.

6. Admittedly, the incident of firing took place at the place of Jummon Rahimoon in presence of Complainant and Dil Karar Mari.

The police have collected the crime empties cartridges of Cartoos and so also the crime weapon which belonged to the Accused Dil Karar as per the description mentioned at column No.6 of the Police Challan.

7. It is also admitted position that the name of Applicant has not mentioned in the FIR. It is also admitted position that the prosecutions witnesses have not implicated the Applicant in their statement under section 161 Cr.P.C. It is also admitted by learned DPG that the name of the Applicant was not mentioned in the interim challan submitted before the Judicial Magistrate concerned and the name of Applicant has come subsequently in the final challan.

8. The prosecution has not specifically attributed any role to the Applicant that may connect the Applicant with the commission of offence for homicide. Apparently, the principal accused have been arrested and crime scene empties has also been collected and after recovery of the said weapon, it has been matched by the prosecution through the official forensic laboratory. The prosecution has failed to collect any incremental material against the Applicant except statement of co-accused even said statement is inadmissible in evidence.

9. The Challan has been submitted before the trial and the Applicant is no more required for investigation. Therefore, no fruitful purpose would be achieved while to keep the Applicant into incarceration for an indefinite period of trial and the Prosecution has no apprehension that the Applicant, if he is released, he might be damaged or tamper with the prosecution's evidence. The Prosecution has not highlighted circumstances, which would indicate that any exceptions to the aforesaid rule as per the said case laws apply in the present case. Under the facts and circumstances of the case in hand, when an investigation has been completed and challan has been

submitted before the trial Court, the Applicant in case, he is freed, he cannot tamper with the prosecution evidence nor is there any prior conviction and no apprehension of absconding has been expressed at all. It does not appear that the Applicant's incarceration would serve the cause of justice.

10. Undoubtedly, the offence in the present case, being punishable with death or imprisonment for life under Section 302, PPC, falls within the prohibitory clause of Section 497(1), Cr.P.C. and such types of offences, the bail can only be granted on three grounds:

- (i) under the first proviso to Section 497(1), Cr.P.C., on the ground of the accused being a minor, or a woman, or a sick or infirm person;
- (ii) under the third proviso to Section 497(1), Cr.P.C., on the ground of delay in the conclusion of the trial beyond the period prescribed for no fault of the accused; and
- (iii) under Section 497(2), Cr.P.C, on the ground that there are no reasonable grounds for believing that the accused has committed the offence, but rather there are sufficient grounds for further inquiry into his guilt.

For the determination of the question under Section 497(2), Cr.P.C., as to whether or not there exist any "reasonable grounds" for believing that the accused has committed the alleged offence, the courts have to appraise although tentatively the whole material available on the record of the case and a tentative assessment of the evidence collected during the course of investigation and the statement of witnesses for and against the Applicant/accused is essentially required to form a tentative opinion and determinative point. These principles

have settled by the Honorable Supreme Court of Pakistan.¹

The Applicant name is not mentioned in the FIR or statement of prosecution witnesses and even his name is not mentioned in the interim challan. Facing oppositely, the role of the Applicant has also not been attributed or assigned towards the commission of offence.

11. In the same similar nature case², the Hon'ble Apex Court held that:

“2. After hearing learned counsel for the petitioner, counsel for the complainant, learned Addl. Prosecutor General Punjab and having gone through the record we observe that although the FIR was chalked out on a written application of the complainant Faisal Jameel but name of the petitioner is not mentioned in the said FIR rather it is mentioned that the unknown person who fired four shots at Javed Bashir can be identified by the complainant if brought before him. Subsequently, the supplementary statement was recorded by the complainant who categorically stated that he identified the petitioner then and there when he made fire shots upon Javed Bashir deceased. This divergent stance of the complainant makes the case of the petitioner of further inquiry falling under subsection (2) of section 497 of the Criminal Procedure Code (Cr.P.C.). Hence, this petition is converted into an appeal and the same is allowed. The petitioner is released on bail subject to his furnishing bail bond in the sum of Rs.2,00,000/- (Rupees two hundred thousand only) with two sureties in the like amount to the satisfaction of the trial Court.”

12. It is also well settled principle of law that in a case calling for further inquiry into the guilt of an accused person, bail is to be allowed to him as a matter of right and not by way of grace or concession. Reliance can be placed on the case of Ikram-ul-Haq.³

¹ “Raza Bukhari v. State” (PLD 2022 SC 743) & “Khalid Gillani v. State” (PLD 1978 SC 256)

² Haider Ali v. The State and others (2021 SCMR 629)

³ Ikram-ul-Haq v. Raja Naveed Sabir and others (2012 SCMR 1273)

13. At present this Court is of the view that except the disclosure of the name of Applicant by co-Accused, no other incriminating evidence is available against the Applicant. The material collected by the Investigation Officer and challan submitted in the Court so far against the Applicant is based upon suspicion which obviously to be decided by the trial Court after completion of trial and adducing the evidence by the prosecution. In the identical situation where Accused was arrested on the supplementary statement of the prosecution witnesses is not appreciated by Hon'ble Supreme Court and the case of the Applicant has much on better footings.⁴

14. In conclusion, it may be observed that it is now rule that the doctrine of benefit of doubt can be extended to the accused even at bail stage if the facts of the case so warrant. Reliance can be placed on Resham Khan's case⁵, the Hon'ble Supreme Court of Pakistan held as under:

“8...The insight and astuteness of further inquiry is a question which must have some nexus with the result of the case for which a tentative assessment of the material on record is to be considered for reaching just conclusion. The case of further inquiry presupposes the tentative assessment which may create doubt with respect to the involvement of the accused in the crime. It is well settled that object of trial is to make an accused to face the trial and not to punish an under trial prisoner. The basic idea is to enable the accused to answer criminal prosecution against him rather than to rot him behind the bar. Every accused is innocent until his guilt is proved and benefit of doubt can be extended to the accused even at bail stage if the facts of the case so warrant. The basic philosophy of criminal jurisprudence is that the prosecution has to prove its case beyond reasonable doubt and this principle applies at all stages including pre-trial and even at the time of deciding whether accused is entitled to bail or not...”

15. The epitome of above discussion is that the Applicant Natho Mal, has succeeded in making the case for the confirmation of

⁴ “Syed Muhammad Firdaus and others Vs. The State” (2005 SCMR 784).

⁵ *Resham Khan & another Vs. The State*” (2021 SCMR 2011)

the post-arrest bail, hence, this bail application is allowed and the applicant is hereby granted bail subject to his furnishing surety and bail bonds in the sum of Rs.100,000/- (Rupees one hundred thousand only) to the satisfaction of the learned trial Court. It is, however, clarified that observations made herein above are just tentative in nature, strictly confined to the disposal of this bail petition and shall not prejudice the case of either side during trial.

JUDGE

"Adnan Ashraf Nizamani"