

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 749/2025

Applicant : Nazar Muhammad son of Samad Gul Khan,
Through Mr. Muzafar Ali, Advocate

Respondent : The State
Through Mr. Muhammad Mohsin, A. P.G

Date of hearing : 22.04.2025

Date of order : 28.04.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – The applicant Nazar Muhammad seeks post-arrest bail in a case bearing Crime No. 97/2024, for offence under section 395 PPC of P.S Mithadar, Karachi. Earlier bail application filed by the accused was dismissed vide order dated 22.02.2025 by the learned Additional Sessions Judge-VIII Karachi South.

2. The brief facts of the prosecution case, as set forth in the FIR lodged by the complainant Ahsanullah Khan, are that on 17.05.2024, at about 1:45 p.m., while the complainant was present at his residence along with his family, five unknown individuals forcibly entered the premises. The intruders, reportedly armed, allegedly detained the complainant and his family members at gunpoint and committed robbery by looting valuables from the house. The complainant maintained that he would be able to identify the culprits upon confrontation.

3. The learned counsel for the applicant has vehemently contended that the accused is innocent and has been falsely implicated in the case in collusion with the complainant and police officials. It was submitted that co-accused Eid Muhammad has already been granted pre-arrest bail by the learned VIIth Additional Sessions Judge, Karachi South, and therefore, the principle of consistency warrants similar treatment for the present applicant. It is further argued that the testimony of the identifying witness, Miss Kainat, recorded during trial, reveals that all alleged assailants were wearing masks during the occurrence, making identification doubtful. The learned counsel also pointed out that during the said witness's deposition, she disclosed that the Investigating Officer showed her an album of suspects and influenced her to recognize specific individuals as culprits, thereby tainting the process. Moreover, the learned counsel highlighted

that during the identification parade conducted on 05.06.2024, the accused Nazar Muhammad was produced without facial covering, in contravention of established procedures, and this fact was duly recorded by the learned XIV Judicial Magistrate, Karachi South. It was further asserted that on 30.05.2024, the applicant was unlawfully apprehended within the premises of the City Courts by certain police officials without lawful intimation to the concerned police station. Following this incident, an application was submitted to the SHO, P.S. City Courts, against Inspector Azhar, Waqas, and four other unidentified police officers. Subsequently, on 31.05.2024, while the applicant was leaving the City Courts premises after filing a petition under Sections 22-A & B Cr.P.C., he was allegedly abducted again by the same police officials near Gate No.3. The presence of CCTV cameras at the said gate, it was argued, corroborates this version. Additionally, the FIR is claimed to have been lodged thereafter, with a delay of around one hour, which, in absence of any plausible explanation, creates serious doubt regarding the authenticity of the prosecution case.

4. Conversely, the learned APG for the State opposed the bail application on the ground that the accused was duly implicated in a serious offence involving armed robbery, and was identified during an identification parade held before the learned Magistrate. It was submitted that three prosecution witnesses have already been examined, and therefore, the applicant is not entitled to the concession of bail at this stage.

5. It is an admitted position that the name of the present applicant/accused does not find mention in the FIR. He was arrested in a case bearing crime No. 140/2024, lodged at Police Station Eidgah under Section 23(1)(a) of the Sindh Arms Act, 2013. In such a case he has been acquitted by the court of learned Additional Sessions Judge V south Karachi, which exoneration adds weight to the applicant's plea of false implication in the present matter. The complainant did not describe any distinguishing features, hulya, or other identifiers of the alleged assailants at the time of registration of the FIR, which was lodged against unknown individuals. This circumstance, in itself, casts doubt upon the subsequent implication of the applicant. which exoneration adds weight to the applicant's plea of false implication in the present matter. The case of the prosecution hinges upon the recovery of one Qatari Riyal allegedly at the

instance of the applicant; however, it is noteworthy that the FIR is silent as to any such currency or its relevance to the commission of the offence. The belated disclosure of this alleged recovery, absent from the foundational document of the prosecution case, renders the said recovery highly doubtful. Moreover, the identification parade was conducted after an unexplained delay of five days following the arrest of the accused. No plausible justification has been offered for this delay, and the identification proceedings are otherwise marred by procedural irregularities. Such delay and deficiencies affect the evidentiary value of the identification test, particularly when the accused was already in police custody during this period. It is also relevant to note that the complainant and PW Kainat have been examined before the learned trial Court, and thus the possibility of tampering with prosecution witnesses stands considerably diminished.

6. In view of the above facts, coupled with the acquittal of the applicant in a connected matter, the belated and procedurally flawed identification parade, and the doubtful nature of the alleged recovery, the case against the applicant calls for further inquiry within the meaning of Section 497(2), Cr.P.C. The applicant is, therefore, entitled to the concession of bail. It is settled law that bail should not be withheld as a form of punishment. In *Muhammad Shakeel v. The State* (2017 SCMR 733), the Hon'ble Supreme Court was pleased to hold that even in cases where reasonable grounds exist, if the offence does not fall within the prohibitory clause of Section 497(1) Cr.P.C., bail should ordinarily be granted, particularly when further inquiry is required and the accused is not shown to be a habitual offender and such case is in consonance with the famous landmark judgment of *Tariq Bashir Vs. The State* (PLD 1995 SC 34), which underscore that where the case calls for further inquiry or the accused is a first-time offender, bail may be granted even in cases of serious nature. In the present case, the evidence requires judicial scrutiny at the stage of trial and the applicant, deserves benefit of the doubt and protective relief of bail rather than punitive incarceration.

7. Given the above, applicant has succeeded to make out case of further enquiry. Accordingly, he is admitted to post-arrest bail subject to furnishing solvent surety in the sum of Rs.100,000/-(Rupees one hundred thousand only) and a P.R. bond in the like amount to the satisfaction of the learned trial Court.

J U D G E