

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1095 of 2025

Applicant : Ghamshad son of Zehri Rindh,
through Mr. Ahmed Hussain Jokhio, Advocate

Respondent : The State
through M/s. Qamaruddin & Tanseera Yaqub,
Asstt: PG Sindh.

Date of hearing : 16.05.2025

Date of order : 30.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J.- Applicant Ghamshad seeks post-arrest bail in case bearing crime No.41/2025, registered at Police Station Gharo, District Thatta, offence under Sections 392 and 397 PPC. His earlier bail plea was declined by the court of learned Ist Additional Sessions Judge/Model Criminal Trial Court, Thatta vide order dated 05.04.2025.

2. The factual matrix, as gleaned from the FIR, indicates that the complainant alleges a robbery at his shop on 12.03.2025, at about 1930 hours, where two unidentified individuals on a motorcycle, robbed him of Rs.30,000/- at gunpoint. The applicant was later nominated based on alleged spy information, without disclosing its source.

3. Learned counsel has raised several pertinent points. Firstly, he draws the Court's attention to the delay of two days in lodging the FIR, despite the police station being in close proximity to the scene of the alleged crime. This delay, without plausible explanation, raises a significant question regarding the veracity of the complainant's version and the possibility of false implication and exaggeration. Secondly, the learned counsel highlights the absence of any disclosed source of information in the FIR, which casts doubt on the manner in which the applicant/accused was implicated. The failure to conduct an identification parade before a Magistrate, a crucial step in ensuring the reliability of identification, further weakens the prosecution's case at this stage. Thirdly, the learned counsel contends that no actual recovery was effected from the applicant, and any purported recovery is likely a fabrication. He further points out that the investigation is still ongoing, and no challan has been submitted, indicating

that the evidence against the applicant/accused is, as of now, largely based on hearsay.

4. The learned APG argued, though there was a delay in filing the FIR, this delay should not automatically invalidate the case. He added that victims of crimes like robbery often experience shock or need time to gather information, and that the seriousness of the robbery should be considered. Regarding the source of the information used to identify the accused, the prosecution contended that this information is part of the ongoing investigation and may be kept confidential for safety reasons, and its absence in the FIR is not critical at this stage. On the matter of the identification parade, he argued that its absence does not make the identification of the accused unreliable, as the complainant stated they could identify the culprits if seen again, and that the complainant's testimony and other evidence are also relevant. Concerning the recovery of incriminating articles, he asserted that the investigation is still in progress and the absence of such recovery does not prove innocence, emphasizing that the accused was identified through the investigation. Finally, the APG argued that even if the offense is not under the prohibitory clause of Section 497 Cr.P.C., the court can still deny bail if there is sufficient evidence of the accused's involvement, and that "further inquiry" does not automatically mean bail should be granted looking to the seriousness of the offense, the risk of the accused fleeing, and the need to prevent witness tampering.

5. I find considerable force in these submissions. The unexplained delay in lodging the FIR, the lack of a disclosed source of information, and the absence of a proper identification parade are all factors that, cumulatively, create significant doubt about the applicant's involvement in the alleged offense. The fact that the investigation is still at a preliminary stage, with no challan submitted, further underscores the weakness of the evidence against the applicant at this juncture.

6. The offence under Section 392/397 PPC, while serious, but does not fall within the prohibitory clause of Section 497(1) of Cr.P.C. It is a well-established principle of law that in cases where the offence does not fall within the prohibitory clause, and there are grounds for further inquiry, bail is generally granted.

7. The principles enunciated in 2005 P.Cr.L.J 89 and 1996 P.Cr.L.J. 740, which emphasize the presumption of innocence and the importance of not curtailing the liberty of an individual without sufficient cause, are also relevant in this context. Considering the totality of the circumstances, including the delay in lodging the FIR, the lack of a disclosed source of information, the absence of an identification parade before a Magistrate, the contention regarding the recovery of incriminating articles, and the fact that the offense does not fall within the prohibitory clause of Section 497(1) Cr.P.C., I am of the considered view that this is a fit case for the grant of bail. Accordingly, this application is allowed. The applicant Ghamshad is hereby admitted to bail, subject to furnishing solvent surety in the sum of Rs. 50,000/- (Rupees fifty thousand only) to the satisfaction of the learned trial court.

8. It is clarified that the observations made herein are tentative in nature and will not affect the merits of the case during the trial. The learned trial court shall proceed with the trial strictly in accordance with the law.

J U D G E