

**IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No. 2101 of 2025

**Rajput**

**Present:**

**Acting Chief Justice Zafar Ahmed**

**Justice Miran Muhammad Shah**

Applicant : Muhammad Ali s/o Muhammad Yamin,  
through M/s. Asfandyar Jahangir & Jamshed  
Ahmed Khokhar, Advocates.

Complainant : Akbar Anwar s/o Muhammad Arshad Anwar  
through Mr. Raja Hassan Nawaz, Advocate

Respondent : The State, through Mr. Mumtaz Ali Shah,  
Assistant Prosecutor General (APG).

Date of hearing : 24.09.2025  
Date of order : 24.09.2025

**ORDER**

**ZAFAR AHMED RAJPUT, ACJ.** Applicant/accused Muhammad Ali s/o Muhammad Yamin on being unsuccessful in getting relief of post-arrest bail from Anti-Terrorism Court No. III, Karachi vide order dated 21.02.2025, passed in CrI. Bail Application No. 04 of 2025, filed in Special Case No. 80 of 2024, arisen out of FIR No. 514/2023, registered at Police Station Darakshan, Karachi-South under section 365-A/34, PPC r/w section 7 of the Anti-Terrorism Act, 1997 (“**Act of 1997**”), seeks through instant application the same concession from this Court.

**2.** It is alleged that, on 21.10.2023 at about 2105 hrs., complainant Akbar Anwar left his shop, situated at Zamzama Ward, Phase-V, DHA, Karachi for home in his Toyota Rocco bearing Registration No. LC-3410, with a hand bag containing Rs. 9,00,000/- and GBP 980/-. He reached 26<sup>th</sup> Street traffic signal, Phase-VI, DHA, Karachi, where two vehicles i.e. Toyota Fortuner bearing No. GP-7767 and black Rocco with police lights intercepted him. 6/7 armed persons boarded in said vehicles took him out of his vehicle and made him sit in their black Rocco by covering his face with his kameez. They also took his mobile phone and after making him roaming at different places for about two and half hours, they took him to a house, then to an ATM of HBL and withdrew Rs. 7,20,000/- from there; then they withdrew Rs. 1,50,000/-

from the ATM of UBL; thereafter at 0245 hrs., they dropped him at Kababjees, near FTC, Shahra-e-Faisal and drove away. For that, the complainant lodged the aforesaid FIR on 24.10.2024.

3. Learned counsel for the applicant has contended that the applicant is innocent and has falsely been implicated in this case by the complainant due to ulterior motives and mala fide intention, otherwise he has nothing to do with the alleged incident and he is not concerned with it in any manner; that the name and description of the applicant are not mentioned in the FIR; that the incident took place on 21.10.2023 to 22.10.2023 from 09:05 p.m. to 02:24 a.m., while the FIR was lodged on 24.10.2023 with delay of 3 days without any explanatory clause, which creates serious doubts in the prosecution story; that there is dishonest improvements in the statement of the complainant recorded under section 161, CrPC with unexplained delay of more than one month; that neither any CCTV footage nor any photograph of such incident has been obtained by the I.O. to connect the applicant with commission of alleged offence; that the applicant has been implicated in this case on the basis of statement of co-accused, which is inadmissible under Article 38 & 39 of the Qanoon-e-Shahadat Order, 1984 (**“Order, 1984”**); that no direct or indirect evidence is available with the prosecution to connect the applicant with the commission of alleged offence; that the applicant was actually arrested in the month of December 2023, whereas, the alleged recovery was made in the month of January 2024; as such, illegal foistation thereof cannot be ruled out; that no identification parade of the applicant through complainant has been held before concerned Judicial Magistrate; that neither 164 CrPC statement of the complainant nor any confessional statement of the applicant has been recorded before the concerned Judicial Magistrate; that the case of the applicant falls within the ambit of sub section (1) of section 497, CrPC where the bail is rule and refusal in exception; that the investigation of the case in hand has already been completed and police has submitted the Challan; hence, the applicant is no more required for further

investigation; that the applicant is behind the bars since last 22 months and the trial has not been concluded; as such, he is entitled to the concession of bail.

4. Conversely, learned counsel for the complainant as well as APG have opposed the instant application on the ground that the FIR was lodged against unknown persons and prosecution has no motive to implicate the applicant falsely in the case, who is a habitual offender; that on 05.01.2024 an amount of Rs.5,00,000/- was recovered from the house of the applicant on his pointation; that the applicant has not alleged any enmity against the complainant for falsely implicating him in this scheduled offence; that the applicant, whose nickname is “*ISI Wala*”, is the mastermind of the alleged crime, who alongwith co-accused obtained vehicles No. KX2258- Toyota Revo and BJ-2648- Fortuner on rent from Rent a Car and put fake Government Number plate bearing No. GP-7767 on said Fortuner and used the same for the abduction of the complainant.

5. Heard. Record perused.

6. It appears from perusal of the record that the FIR was lodged against the unknown persons; hence, *prima facie* there appears no reason for false implication of the applicant by the complainant in this case. Moreover, police have recovered Rs. 5,00,000.00 from the house of the applicant on his pointation, which is alleged to his chunk of ransom amount received by the accused persons from the complainant for his release.

7. As regard the contentions of learned counsel for the applicant, suffice to say, as observed in the case of *Zakir Khan and another vs The State* (1995 SCMR 1793), that according to Article 38 of the Order, 1984 “no confession made to a police officer shall be proved as against a person accused of any offence”. Article 39 (*ibid*) carries the rule further, but for a confession made in the immediate presence of a Magistrate, by rendering a confession inadmissible if made by the accused whilst he is in custody of a police officer.

Article 40 (*ibid*), which next follows the said Articles provides that, when any fact is deposited 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 means that a confessional statement made to a police officer or in presence of a police officer would be inadmissible in evidence unless it leads to discovery of a fact. In fact, Article 40 operates as a proviso to the preceding Articles, However, in order to make any such information admissible, what is required to be established by the prosecution is that any article or such other evidence discovered during the investigation of a case in consequence of information supplied by the accused connects him with the crime.

**8.** The basic idea embedded in Article 40 of the Order, 1984 is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from an arrested accused, such a discovery is a guarantee that the information supplied by him is true. The information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact, it becomes a reliable information. Hence the Legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum.

**9.** It is also matter of record that the applicant a habitual offender and previously he is involved in at least three criminal cases. From the tentative assessment of the evidence on record, it appears *prima facie* that the prosecution has sufficient material to connect him with the commission of alleged offence carrying punishment under section 365-A, PPC read with section 7 of the Act of 1997 with death or imprisonment for life, which falls within prohibitory clause of section 497, CrPC. No case for granting bail to him on the ground of further inquiry has been made out. Every hypothetical question which could be imagined would not make it a case of further enquiry

simply for the reason that it could be answered by the trial Court subsequently after evaluation of evidence. Applicant's claim with regard to his false implication is an issue that cannot be attended without going beyond the scope of tentative assessment, an attempt prohibited by law.

**10.** As a result of above discussion, the instant criminal bail application is rejected leaving the applicant at liberty to repeat the same before the Trial Court in case fresh grounds are available to him after examination of complainant and PW Ali Asghar.

**11.** Needless to mention that the above observations are tentative in nature for the disposal of this bail application and the same shall not influence the Trial Court while deciding the case of the applicant on merits.

**12.** Above are the reasons of our short order, dated 24.09.2025, whereby the instant application was dismissed.

Acting Chief Justice

Judge

*Athar Zai*