

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1957 of 2025

Feroz @ Ali son of Imdad Hussain.....Applicants/Accused

Versus

The State.....Respondent

Date of Hearing : 20.10.2025

Date of Short Order : 20.10.2025

For the Applicant : Mr. Gul Sher Ali, Advocate.

For the complainant : In person.

For the State : Ms. Seema Zaidi, Additional P.G.

ORDER

TASNEEM SULTANA, J: Through this bail application, the applicant Feroz @ Ali seeks post-arrest bail in Crime No.2002 of 2024 registered at Police Station Sachal, Karachi, under Sections 397 and 34 PPC.

2. Brief facts of the prosecution case are that the complainant Faizan Ali Khan, who works as a driver, stated that on 27.01.2024 while waiting for passengers in his Suzuki Alto car No. 935-CAC near Quaidabad, two unknown persons came to him and asked him to go to Shahbaz Goth for a fare of Rs.2000/-; near Malir Court, they picked up one of their companions, and when they reached the indicated place at about 10:45 p.m., all three, at gunpoint, snatched from him his Tecno Spark mobile phone, Rs.2200/- in cash, and his car, and fled away. He thereafter reported the incident and lodged FIR against three unknown culprits identifiable by face.

3. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated; that his name does not appear in the FIR nor is any physical description mentioned therein; that the alleged identification before police is inadmissible under Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984, as no test identification parade was conducted before a Magistrate; that no recovery of any robbed article or weapon has been effected; that the challan has been submitted, and the applicant is no longer required for investigation; that he has already been granted bail in the

connected offshoot case bearing FIR No.03 of 2025 under Sections 392, 397, 34 PPC by the learned Additional Sessions Judge, Malir; that mere registration of previous FIRs is not proof of guilt unless followed by conviction, and continued detention amounts to pre-trial punishment.

4. Conversely, learned DPG assisted by the complainant, opposed the grant of bail and argued that sufficient material is available to connect the applicant with the offence; that he was identified by the complainant during investigation; that the offence falls within the prohibitory clause of Section 497 Cr.P.C. as it involves use of deadly weapon under Section 397 PPC; and that the earlier bail order having been dismissed on merits attained finality.

5. Heard. Record perused.

6. It appears that alleged incident had taken place on 27.11.2024 and FIR was registered on 01.12.2024, with a delay of about 5 days. Such inordinate and scandalous delay in reporting the matter to the police in a robbery case is fatal to the prosecution and this sole fact makes the entire case of prosecution doubtful. It is well-settled law that, delay in reporting the matter to the police is usually caused due to factors i.e. deliberation, negotiation and discussions, therefore it falls within the ambit of deliberation and afterthought.

7. In present case, though the FIR was against unknown persons yet upon arrest of the present applicant/accused there appears no test-identification parade has been conducted. It is well-settled that in cases where the names of culprits are not mentioned, holding of test identification parade becomes mandatory. Reliance is placed on the case of Farman Ali v. The State (1997 SCMR 971), wherein the Hon'ble Supreme Court of Pakistan has observed as under:-

“7. Holding of identification test becomes necessary in cases, where names of the culprits are not given in the F.I.R. Holding of such test is a check against false implication and it is a good piece of evidence against the genuine culprits.....”

8. At this stage, only a tentative assessment of the material is permissible to see whether prima facie reasonable grounds exist to believe that the applicant is guilty of the alleged offence or whether

the case calls for further inquiry within the contemplation of Section 497(2) Cr.P.C.

9. The alleged weapon has not been recovered from the possession of the applicant, and it is yet to be determined whether the alleged “use of weapon” within the meaning of Section 397 PPC is attributable to him. In absence of recovery or corroborative evidence, it is difficult to conclude that the case squarely falls within the mischief of Section 397 PPC. Section 391 PPC defines dacoity as follows:

“When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding is said to commit ‘dacoity’.”

10. Thus, for the offence of dacoity, participation of at least five persons is an essential element. The FIR attributes the incident to three unknown persons only; therefore, even taking the prosecution version at its face value, the ingredients of dacoity are not fulfilled. The applicability of Section 397 PPC hence becomes a matter requiring deeper scrutiny at trial.

11. Failure to hold identification parade in accordance with Rule 26.32, absence of recovery, and doubtful attribution of weapon collectively create reasonable doubt regarding the involvement of the applicant. The case, therefore, falls within the ambit of further inquiry as envisaged under Section 497(2) Cr.P.C.

12. Accordingly, the instant bail application is allowed and the applicant Feroz @ Ali is admitted to post-arrest bail subject to furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand only) and P.R. bond in the like amount to the satisfaction of the trial Court.

13. The observations made herein are tentative and confined to the decision of this bail application; they shall not influence the trial Court, which shall determine the case strictly on its own merits.

JUDGE

Ayaz Gul