

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. S-126 of 2025

Applicant : Shoaib Hassan son of Hassan Ali, Naich
Through Mr. Ali Ahmed Khan, Advocate

Complainant : Majid Ali son of Dost Ali, Naich
Through M/s Muhammad Ali Napar & Danish
Ali Bhatti, Advocates

The State : Through Mr. Mansoorr Ahmed Shaikh, DPG

Date of hearing : 22.09.2025
Date of order : 23.10.2025

ORDER

KHALID HUSSAIN SHAHANI, J.— The applicant Shoaib Hassan Naich, has sought post-arrest bail in a case bearing Crime No.78 of 2022, for offences under Sections 302, 363, 506(2), 109 and 342 PPC, registered at Police Station Mirpur Mathelo. Previously bail of the accused was dismissed and he was taken into custody.

2. The brief facts of the prosecution case, as emerging from the FIR, are that the complainant's maternal cousin, Mst. Nadia Khan, was married to Asif Ali Naich, presently serving in Saudi Arabia, and had a daughter named Hoorain. It is alleged that the accused Shoaib Hassan and Tariq, brothers of her husband, along with their female relatives Mst. Zarina and Mst. Shaista, habitually harassed Mst. Nadia over domestic issues and threatened that she would be murdered on account of her alleged improper conduct. On 13th April 2022, at about 22:30 hours, the complainant, along with two other witnesses, visited Mst. Nadia at her residence in Shah Faisal Colony, Mirpur Mathelo, where the accused were also present. It is alleged that in the presence of the complainant and witnesses, accused Shoaib and Tariq hurled abuses at Mst. Nadia, declared that they would not spare her, and stated that they had sought permission from Asif Ali to commit her murder. Accused

Tariq is alleged to have brandished a pistol and threatened the complainant and witnesses, who remained silent out of fear. Thereafter, Mst. Zarina and Mst. Shaista allegedly held Mst. Nadia by her limbs, accused Shoaib Hassan strangled her with cloth around the neck, and all the accused collectively hanged her from the ceiling fan, resulting in her death. The complainant and witnesses were then forcibly locked in a room and threatened with dire consequences if they disclosed the incident. The accused also took away the minor daughter Hoorain, threatening to murder her if the matter was reported. The complainant and witnesses remained confined throughout the night and raised alarm in the morning, attracting neighbours who opened the door. The police were informed, the dead body was shifted to District Head Quarter Hospital Mirpur Mathelo for post-mortem examination, and the FIR was lodged on 15th April, 2022 after completion of funeral rites.

3. The learned Advocate for the applicant has advanced extensive submissions in support of the bail application. He submitted that the applicant has been falsely implicated in this matter due to domestic disputes between the parties. He forcefully contended that the deceased lady was mentally unstable, had attempted suicide on previous occasions, and that such facts were known to her brothers, yet the present applicant has been malafidely nominated by the complainant party to suppress the real facts. He argued that the post-mortem report clearly indicates that death was caused due to asphyxia by hanging, and whereas the allegation in the FIR is of strangulation, which is a painful death according to medical jurisprudence requiring struggle by the victim, there are no marks of violence on the body of the deceased except the ligature mark, thus casting serious doubt upon the prosecution version. He submitted that there was an inordinate and unexplained delay of two days in lodging the FIR, which has not been

satisfactorily explained and is indicative of afterthought and consultation. He placed great emphasis upon the fact that the investigation conducted by DSP Ghulam Ali Jumani, who was specially assigned to investigate the case, resulted in a recommendation for disposal of the case in C-Class with further recommendation for initiating proceedings under Section 174 Cr.P.C on the ground that the deceased had committed suicide, and all the nominated accused were declared innocent in the investigation report. He submitted that the forensic DNA profiling and NADRA fingerprint analysis failed to establish any linkage between the applicant and the commission of the offence, and no male DNA or semen stains were found on the clothes of the deceased. He contended that the scientific evidence decisively exonerates the applicant and warrants further inquiry. He submitted that the co-accused, namely Mst. Zareena and Mst. Shaista, who are alleged to have played identical and active roles in the commission of the offence, have been granted bail by the learned Court of Additional Sessions Judge-II, Mirpur Mathelo, Ghotki and the bail of co-accused Tariq Hussain has also been granted, and that the case of the present applicant stands on even stronger footing. He argued that the complainant challenged the bail order of Mst. Zareena and Mst. Shaista before this Court vide CrI. Miscellaneous Application which was dismissed for non-prosecution, thus indicating lack of interest on the part of the complainant. He submitted that the applicant was declared a proclaimed offender and subsequently arrested, and that during the pendency of trial, when the complainant and witnesses failed to appear despite coercive measures including non-bailable warrants and proclamations under Sections 87 and 88 of the Criminal Procedure Code, the trial Court placed the case in abeyance vide order dated 26th September, 2023 and the applicant, who was in custody at that time, was released upon furnishing a solvent surety in the

sum of Rs.200,000 in terms of Section 91 of the Criminal Procedure Code. He submitted that the applicant has been attending Court proceedings with regularity and punctuality ever since his release, and has not violated any condition or misused the liberty granted to him. He submitted that despite the framing of charge against the accused, not a single private prosecution witness has been produced, and only three official witnesses have been examined, namely the author of the FIR, the *Tapedar* who prepared the sketch, and the Medical Officer who conducted the post-mortem examination. He argued that the complainant and private witnesses have shifted to unknown places and despite repeated judicial measures, have not appeared, thereby denying the accused a fair and expeditious trial. He contended that the applicant has remained incarcerated for a period exceeding ten months without any meaningful progress in the trial, and that such prolonged detention without trial is violative of the fundamental rights enshrined in the Constitution of Pakistan. He submitted that the continued detention of the accused serves no fruitful purpose when the prosecution has failed to advance the case and the trial has come to a complete standstill due to the conduct of the complainant and witnesses. He argued that bail is the rule and jail is the exception, and that where the prosecution case is weak, doubtful, and requires further inquiry, bail ought to be granted. He relied upon the case law reported as 2023 SCMR 364, 2012 MLD 319, 2009 P.Cr.LJ 384, 2008 YLR 2728, 2005 YLR 2477, 2008 MLD 847, and other reported judgments.

4. On the other hand, the learned Deputy Prosecutor General for the State, assisted by the learned advocates for the complainant, has vehemently opposed the bail application. They submitted that the name of the present applicant is mentioned in the FIR with a specific and active role of

strangulating the deceased Mst. Nadia Khan with a cloth around her neck, and that this role distinguishes him from the other co-accused who have been granted bail. They argued that cognizance was rightly taken by the learned Judicial Magistrate under Section 190 of the Criminal Procedure Code, and that the recommendation of the Deputy Superintendent of Police for C-Class disposal was not accepted by the learned Deputy District Public Prosecutor, who scrutinized the material and found the report doubtful on various counts and recommended the case fit for challan. They submitted that the opinion of the investigating officer is not binding upon the Court, and reliance was placed upon the cases reported as 2010 SCMR 1861, 2016 YLR 2629, and PLD 2014 Sindh 538. They argued that the post-mortem report supports the prosecution version inasmuch as it indicates asphyxia caused by hanging, and that the absence of private witnesses at this stage does not disentitle the State from proceeding with the prosecution. They submitted that the surety furnished by the applicant under Section 91 of the Criminal Procedure Code was merely to secure his attendance and does not equate to bail under Sections 497 or 498 of the Criminal Procedure Code, and that upon the reopening of the case, the applicant ought to have applied for bail afresh. They relied upon the case reported as 2014 SCMR 1762, wherein it was held that Section 91 of the Criminal Procedure Code applies for ensuring attendance of parties and does not authorize release of an accused in a non-bailable offence. They contended that the charge has been framed, three official witnesses have been examined, and the case is now fixed for cross-examination and for the evidence of the complainant and eyewitnesses, and that the applicant is not entitled to bail at this stage. They argued that the alleged offence falls within the prohibitory clause of Section 497 Cr.P.C, and that the applicant has failed to make out a case for bail. They relied upon

case law reported as 2021 SCMR 522, 2021 P.Cr.LJ 759, 2022 YLR 1338, 2021 MLD 1319, 2024 YLR 1922, 2023 YLR Sindh 2117, 2016 SCMR 2094, and 2011 SCMR 161.

5. The genesis of the present case requires careful examination. The incident is alleged to have occurred on the night of 13th April, 2022 yet the First Information Report came to be lodged on 15th April, 2022 after a lapse of more than thirty six hours. The delay in setting the criminal law into motion has not been satisfactorily explained, and no plausible reason has been offered for this inordinate lapse of time. In matters involving heinous offences, promptitude in lodging the FIR is expected, and any delay, unless reasonably explained, casts a shadow upon the genesis and credibility of the prosecution case. The delay in the present case raises a legitimate suspicion of afterthought, embellishment, and consultation.

6. The investigation of the case reveals significant developments. Initially, the investigation was conducted by the local police, but subsequently, upon orders of the Deputy Inspector General of Police, Crime Investigation, Sindh, Karachi, dated 22nd July, 2022 the investigation was assigned to DSP Ghulam Ali Jumani, who conducted a fair and impartial inquiry. After verifying facts secretly and openly and examining all available material evidence, the said officer recommended disposal of the case in C-Class with further recommendation for initiating proceedings under Section 174 of the Criminal Procedure Code on the ground that the deceased Mst. Nadia Khan had committed suicide, and that all the nominated accused were innocent. This report, dated 10th August, 2022 was submitted before the Court of competent jurisdiction through the Station House Officer. However, the learned Deputy District Public Prosecutor, vide scrutiny report dated 29th October, 2022 did not accept the recommendation of the Deputy

Superintendent of Police, treated the report as doubtful on various counts, and recommended the case fit for challan. It is well settled that the opinion of the investigating officer, though not binding upon the Court, cannot be lightly brushed aside, and must be considered in collocation and juxtaposition with other circumstances. In the present case, the opinion of a senior investigating officer, who was specially deputed to conduct inquiry, cannot be ignored, particularly when the same is based upon verification of facts and examination of independent witnesses.

7. The forensic evidence assumes great significance in the present case. The DNA profiling and NADRA fingerprint analysis conducted by the Forensic Molecular Biology Laboratory, Liaquat University of Medical and Health Sciences, Jamshoro, revealed that no male DNA or semen stains were found on the clothes of the deceased, and that no exogenous tissue or epithelial remains were found on the nails or scarf of the deceased. This scientific evidence, which is objective and impartial, does not connect the applicant with the commission of the offence and raises serious doubts about the prosecution version. The postmortem report indicates that the cause of death was asphyxia caused by hanging, and that all injuries were ante-mortem in nature. The presence of a ligature mark around the neck is consistent with hanging, and the absence of other marks of violence on the body of the deceased is a circumstance which requires consideration. The allegation in the First Information Report is that the deceased was strangulated with cloth and then hanged, but the medical evidence does not unequivocally support this version.

8. The conduct of the prosecution after the framing of charge is a matter which weighs heavily in favour of the applicant. Despite the framing of charge on 06th September, 2023 the prosecution has failed to produce the

complainant and private witnesses for examination. Non-bailable warrants were issued, but the same were returned unserved with the statement of the Station House Officer that the complainant and witnesses had shifted to unknown places and could not be traced. Proclamations under Sections 87 and 88 of the Criminal Procedure Code were initiated, but to no avail. The repeated non-appearance of material witnesses, despite coercive judicial measures, demonstrates a lack of interest or confidence on the part of the prosecution in securing a conviction. The trial has come to a standstill not due to any act or omission on the part of the accused, but due to the conduct of the complainant and witnesses. In these circumstances, the trial Court, vide order dated 26th September, 2023 placed the case in abeyance.

9. The order dated 26th September, 2023 whereby the case was placed in abeyance, requires consideration. The order records that the prosecution has been unable to secure the presence of the complainant and witnesses for the purpose of presenting their evidence, that the accused persons have been consistently appearing before the Court, and that there is little probability of obtaining the attendance of the private witnesses. The order further records that the Code of Criminal Procedure provides no mechanism to meet a situation where there is no chance of appearance of prosecution witnesses in a Sessions Case, and that the accused persons face agony in such a situation where they have to continue attending trial without any hope of acquittal or conviction. In these circumstances, the learned trial Court placed the case in abeyance. Significantly, the applicant, who was in custody at that time, was released upon furnishing a solvent surety in the sum of Rs.200,000. The order does not specify the conditions regarding the taking of the accused into custody upon reopening of the case, nor does it specify the period of retention of the surety. The surety was taken to secure the

attendance of the accused, and the accused has faithfully complied with this requirement by attending Court proceedings regularly and punctually.

10. The case was subsequently reopened on 23rd January, 2025 upon an application filed by the complainant seeking to take the applicant into custody on the ground that he had not applied for bail and that the surety furnished under Section 91 of the Criminal Procedure Code does not equate to bail. The learned trial Court, vide order dated 23rd January, 2025 allowed the application, took the applicant into custody, and directed that the surety bond stands discharged, while observing that the respondent-accused is at liberty to file his bail application. Pursuant to this order, the applicant was taken into custody and has since remained incarcerated. The present bail application has been filed thereafter.

11. The applicant has thus remained under incarceration for a period exceeding ten months in the aggregate. He faced the trial with regularity, attended Court proceedings whenever required, and did not misuse the liberty granted to him when he was released on surety. Despite all coercive measures adopted by the Court and the prosecution, the complainant and material witnesses have not appeared. The evidence of only three official witnesses has been recorded, and the case has not progressed beyond that stage. The cross-examination of these witnesses and the examination of private witnesses remain pending, but there is no indication that the complainant and witnesses, who have shifted to unknown places, will appear in the foreseeable future. In these circumstances, the continued detention of the applicant would not serve any fruitful purpose. The object of bail is to secure the attendance of the accused at trial and not to inflict punishment before conviction. Where the trial has come to a standstill due to the conduct of the prosecution, and where the accused has demonstrated his bona fides

by attending Court proceedings regularly, continued detention becomes oppressive and violative of fundamental rights.

12. The granting of bail to the co-accused is also a relevant circumstance. Mst. Zareena and Mst. Shaista, who are alleged to have caught hold of the deceased by her legs and arms, were granted bail by the learned Additional Sessions Judge vide order dated 29th November, 2022 on the ground that the investigating officer had opined for disposal of the case in C-Class, which created room for further inquiry, and on the ground of hardship. The co-accused Tariq Hussain, who is alleged to have brandished a pistol, was granted bail by the learned Additional Sessions Judge vide order dated 06th July, 2023 on the ground of hardship, prolonged detention, and non-appearance of witnesses. The complainant challenged the bail of Mst. Zareena and Mst. Shaista before this Court, but the said Criminal Miscellaneous Application was dismissed for non-prosecution vide order dated 25th October, 2023 indicating lack of interest on the part of the complainant. The bail of Tariq Hussain has not been challenged and remains intact. In these circumstances, it would be discriminatory to deny bail to the present applicant, particularly when his case is not weaker than that of the co-accused who have been granted bail.

13. The question whether the case is one of further inquiry is a cardinal consideration in bail jurisprudence. The case of further inquiry presupposes a tentative assessment of the material on record which may create doubt with respect to the involvement of the accused in the crime. It is well settled that at the bail stage, the Court is not required to make a deeper examination or appreciation of the evidence collected during investigation or to conduct a preliminary trial to determine the guilt or innocence of the accused. The Court has to look at the material available on record and be

satisfied whether there is, or is not, prima facie some tangible evidence which, if left un rebutted, may lead to the inference of guilt of the accused. In the present case, the recommendation of the case under C-Class by a senior investigating officer, the granting of bail to other accused who are alleged to have played active roles, the remaining of the accused under incarceration for more than ten months, the missing of the circumstantial chain of evidence, the absence of forensic linkage between the applicant and the alleged offence, the non-appearance of material witnesses despite coercive measures, and other aspects of the case make the prosecution case one requiring further inquiry. The guilt or innocence of the applicant would be determined only after full-dressed trial, and observations made at the bail stage are tentative in nature and shall not prejudice the rights of either party.

14. In my considered opinion, having regard to the totality of circumstances, the applicant has made out a case for grant of bail. Accordingly, the bail application is allowed. The applicant, Shoaib Hassan Naich, is admitted to bail subject to his furnishing solvent surety in the sum of Rs.5,00,000 (Rupees Five Hundred Thousand) and a personal recognizance bond in the like amount to the satisfaction of the learned trial Court. The applicant shall attend the trial Court regularly and punctually, shall not tamper with the prosecution evidence, shall not intimidate or influence witnesses, and shall not misuse the concession of bail. It is clarified that the observations made herein are tentative in nature and confined to the disposal of the bail application, and shall not influence or prejudice the trial Court in deciding the case on merits after full-dressed trial.

J U D G E