

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Criminal Bail Application No. S-372 of 2025

Applicant : Ali Akbar son of Ghulam Qadir Magsi,
through Mr. Ayaz Hussain Kalhoro, Advocate

Complainant : Illahi Bux & PW Mst. Fareeda, through Mr.
Faheem Akhtar, Advocate

Respondent : The State
Through Mr. Aitbar Ali Bullo, Deputy
Prosecutor General, Sindh along with DSP
Abdul Ghafoor Chandio

Date of Hearing : 23.10.2025

Date of Order : 23.10.2025

ORDER

AMJAD ALI SAHITO, I-- Through this Bail Application, the applicant/accused Ali Akbar seeks pre-arrest bail in Crime No.28 of 2024 registered with Police Station Behram, District Kamber, for the offence under Section 396 PPC, after his bail plea has been declined by the learned Addl. Sessions Judge-II, Shahdadkot, vide order dated 20.06.2025.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Per learned counsel for the applicant, the applicant is innocent and has falsely been implicated in this case; that the FIR is delayed for about two days, for which no plausible explanation has been furnished; that the police has malafidely implicated him in this case though the complainant has not given his name for which, the complainant has also sworn his Affidavit before the Court of Sessions Judge, Kamber; that the co-accused Sahib Magsi has also been granted bail by the trial Court. Lastly, he prays for confirmation of bail.

4. On the other hand, learned Deputy P.G, Sindh opposes the bail application and submits that the FIR was lodged against five unknown persons, thereafter, Mst. Farida, sister of the deceased moved an application under Section 22 (a) & (b) Cr.P.C before the Court of Ex-Officio Justice of Peace, which was allowed and the matter was referred to SHO, P.S concerned to record the statement of Mst. Farida, whereby she has given the name of the present applicant/accused. Learned counsel for PW Mst. Farida also opposes the bail application.

5. Heard arguments and perused the record.

6. From perusal of record, it reflects that this is an unseen and unwitnessed incident, whereas, deceased Niaz Hussain was murdered during a robbery and before the death, he has recorded a voice message in his mobile phone wherein he has disclosed the role of the present/accused that he has fired upon him. So far the plea raised by the learned counsel for the applicant that name of the applicant does not transpire in the FIR is concerned, learned counsel for PW Mst. Farida argued that after the incident, the police party visited the place of incident wherefrom they recovered a mobile phone in which a voice message of the deceased was recorded and in that voice message the deceased has disclosed name of the present accused. Further, learned Deputy P.G, Sindh has also pointed out that when the police refused to arrest the accused person or to record the statement of the complainant party, they moved an application under Section 22 (a) & (b) Cr.P.C in which name of the applicant/accused was disclosed by the complainant party. The ocular evidence finds support from the medical evidence. The PWs in their 161 Cr.P.C. statement have also supported the version of the complainant party while recording their 161 Cr.P.C and further statements. At bail stage, only tentative assessment is to be made. No ill-will or malafide or enmity has been pleaded by the learned counsel for the applicant for false implication of the applicant in this case. The offence in which applicant is involved, falls within the ambit of prohibitory clause of section 497 Cr.P.C, whereas, the punishment provided by the law is death or imprisonment for life.

7. Further, the concession of pre-arrest bail cannot be allowed to an accused person unless the Court feels satisfied with the seriousness of the

accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local police but not a word about this crucial aspect of the matter is found as no *mala fide* is made on the part of the complainant to believe that the applicant/accused has been implicated in this case falsely. In this context, the reliance is placed to the case of '*Rana Abdul Khaliq v. The STATE and others*' [2019 SCMR 1129]. In addition to the above, I would like to mention that grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; protection to the innocent being hounded on trump up charges through abuse of process of law, therefore, an applicant seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of *mala fide*, it is not a substitute for post-arrest bail in every run of the mill criminal case as it seriously hampers the course of the investigation.

8. In view of the above, learned counsel for the applicant / accused has failed to make out a case for grant of bail. Resultantly, the instant Bail Application is **dismissed**. The interim pre-arrest bail granted to the applicant/accused vide order dated 08.07.2025 is hereby recalled.

9. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants/accused on merits.

JUDGE

Zulfiqar