THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2269 of 2025

Applicant	:	Rizwan @ Dada son of Mehboob Masih through Mr. Shahnawaz Teevino, Advocate
Respondent	:	The State, through Ms. Rubina Qadir, Additional Prosecutor General, Sindh
Date of hearing	:	14.10.2025
Date of decision	:	14.10.2025

O R D E R

Jan Ali Junejo, J.- The applicant, Rizwan @ Dada S/o. Mehboob Masih, seeks post-arrest bail under Section 497, Cr.P.C. in FIR No.41 of 2025 registered at Police Station Surjani Town, Karachi, for offences under Sections 380, 454, and 34, PPC. The bail plea was earlier declined by the learned Judicial Magistrate-III, Karachi-West, vide order dated 07.05.2025, and later by the learned Additional Sessions Judge-IV, Karachi West, vide order dated 17.05.2025. Being aggrieved, the applicant has invoked the jurisdiction of this Court.

2. The prosecution story, as set forth in the FIR, is that the complainant, a government employee, owns a house in Katchi Abadi, Purana Saif-ul-Mari Goth, Surjani Town, Karachi. On 10.01.2025, he received a telephone call from his friend informing him that the lock of his house was broken. Upon visiting the premises, he found that household items including furniture, fans, quilts, and other articles were missing. Upon local inquiry, it was alleged that certain persons including Shan alias Fauji, Shakeel, Yousuf, Dada son of unknown, and two others had stolen the items. Subsequently, the present applicant was arrested and charged with the alleged house-breaking and theft.

3. Learned counsel for the applicant has mainly contended that the applicant is innocent and has been falsely implicated in this case by the police. It is argued that the proper name of the applicant does not find mention in the FIR; that the entire prosecution story rests upon information allegedly conveyed to the complainant by a third party; and that the complainant himself is admittedly not an eyewitness to the alleged occurrence. Learned counsel further submits that there is no direct

evidence, no recovery, and no independent ocular account connecting the applicant with the alleged commission of the offence. It is further contended that the offence with which the applicant is charged does not fall within the *prohibitory clause* of Section 497, Cr.P.C., and that the investigation has already been completed; therefore, the applicant is no longer required for further investigation. He accordingly prays for grant of bail.

4. Conversely, the learned Additional Prosecutor General, Sindh, has vehemently opposed the grant of bail to the applicant on the ground that certain iron plates were allegedly recovered from his possession and that no previous enmity existed between the complainant and the applicant to suggest false implication. She, therefore, prays for the rejection of bail.

5. I have considered the arguments advanced by the learned counsel for the applicant as well as the learned Additional Prosecutor General, Sindh, and have examined the material available on record with their able assistance. A tentative assessment reveals that the FIR does not contain the complete particulars or parentage of the applicant, who has been vaguely described as *"Dada son of unknown"*, thereby rendering his identification doubtful at this stage. The complainant admittedly is not an eyewitness, and the alleged information regarding the occurrence was conveyed to him by a third party over the telephone. Such hearsay information, without independent corroboration, cannot by itself constitute admissible evidence connecting the applicant with the commission of the alleged offence. Furthermore, no recovery of the stolen articles has been effected from the personal possession of the applicant. It also bears noting that any alleged confession made before the police is inadmissible under Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984, being hit by the express bar on confessions made to police officers or while in police custody without the presence of a Magistrate. The alleged offence under Section 380, P.P.C., carries a punishment extending up to seven years and, therefore, does not fall within the prohibitory clause of Section 497, Cr.P.C. As for Section 454, P.P.C., it prescribes two distinct levels of punishment depending on the nature of the intended offence. Generally, lurking house-trespass or house-breaking with intent to commit any offence punishable with imprisonment attracts imprisonment of either description for up to three years, along with a fine. However, if the intended offence is theft, the punishment may extend to ten years, in addition to a fine. It remains to be determined at trial whether the alleged lurking house-trespass or house-breaking occurred, and if so, whether it was committed with intent to commit any offence, or specifically theft. The

investigation is complete, and the applicant is no longer required for further interrogation. The prosecution's case is, at best, circumstantial and based on conjecture rather than direct evidence. Therefore, further inquiry into the applicant's guilt within the meaning of Section 497(2), Cr.P.C. is clearly attracted. It is a settled principle that bail, not jail, is the rule particularly when the evidence against an accused is weak, doubtful, or requires further inquiry. Reference may be made to the case of ***Tariq Bashir and 5 others v. The State (PLD 1995 SC 34)*** and ***Muhammad Tanveer v. The State (PLD 2017 SC 733)***.

6. In view of the foregoing discussion, it appears that the applicant has made out a case of further inquiry within the contemplation of Section 497(2), Cr.P.C. The applicant's continued detention would serve no fruitful purpose.

7. For the reasons delineated hereinabove, this Criminal Bail Application is hereby allowed. The applicant, Rizwan @ Dada son of Mehboob Masih, is granted post-arrest bail, subject to his furnishing a solvent surety in the sum of Rs. 50,000/- (Rupees Fifty Thousand only) and a P.R. bond in the like amount to the satisfaction of the learned trial Court. The observations made herein are tentative in nature and are only for the purpose of this Order, and shall not prejudice the case of either party at the trial. These are the detailed reasons for the short order dated 14.10.2025.

JUDGE

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