

IN THE HIGH COURT OF SINDH, AT KARACHI

Cr. Bail Appln. No. 1167 of 2025.

Applicant : Mst. Hameeda through Mr. Sardar Salman Ishaq, Advocate

Complainant : Mst.Hasina through Mr.Shamsul Hadi, Advocate

Respondent : The State, through Mr. Muhammad Noonari, D.P.G

Date of Hearing : 30.10.2025.

Date of Order : 17.11.2025.

ORDER

TASNEEM SULTANA, J.:- Through this Criminal Bail Application, the applicant seeks post-arrest bail in Crime No.378 of 2024 registered at Police Station Memon Goth, Karachi under Sections 302, 109 and 34 PPC, after dismissal of her bail plea by the learned Additional Sessions Judge-VIII, Malir, Karachi vide order dated 29.03.2025.

2. The prosecution case, briefly stated, is that complainant Mst. Haseena lodged FIR alleging that her brother Ali Akbar, who was engaged in real-estate business, had constructed a house for his sister-in-law Mst. Hameeda (present applicant) on his own plot situated in Yaro Goth, Madina Colony. When he demanded the amount spent on such construction or asked her to vacate the premises, she declined. Thereafter, her sons Muhammad Ismail and Muhammad Bakhsh allegedly extended threats to the deceased, and on 25.11.2024 at about 9:30 p.m., the complainant received information that her brother had been murdered by unknown persons near the graveyard at Malir Naddi, Samon Goth. Upon reaching the spot, she found the dead body of her brother lying there and subsequently alleged that the present applicant along with her sons were responsible for his death. After the usual investigation, challan was submitted showing the applicant arrested, while her two sons were declared absconders.

3. Learned counsel for the applicant contended that the FIR itself reflects that the occurrence was unwitnessed; that the complainant admittedly was not present at the scene; that the entire case rests upon presumption arising out of an earlier property or monetary dispute

between the parties, which, even if taken as correct, is essentially of civil complexion; that no witness has attributed any specific role of abetment, instigation or conspiracy to the applicant; that there is no independent corroboration, recovery or forensic material to connect her with the alleged offence; that the alleged extra-judicial statement recorded by police does not qualify as legal confession; that the applicant is a widow aged about 47 years, having no criminal antecedents, and has been incarcerated for over four months, whereas the trial has yet to commence. It is argued that her case *prima facie* falls within the ambit of Section 497(2) Cr.P.C. read with the first proviso to Section 497(1) Cr.P.C. which provides leniency to female accused.

4. Conversely, learned D.P.G. assisted by learned counsel for the complainant opposed the bail plea mainly on the ground that the applicant stands nominated in the FIR and is the mother of the absconding co-accused who allegedly acted on her instigation; that she is involved in motive and planning of the offence and facilitated commission of the crime.

5. Heard. Record perused.

6. It is trite of law that while deciding a bail plea the Court is not required to undertake deeper appreciation or detailed evaluation of evidence; rather only a tentative assessment is to be made to determine whether reasonable grounds exist for believing that the accused is connected with the alleged offence or whether the case calls for further inquiry within the meaning of Section 497(2) Cr.P.C. Reliance is placed upon *Resham Khan and another v. The State* (2021 SCMR 2011).

7. The occurrence took place at night and is admittedly unwitnessed. The complainant does not claim to have seen the assailants. The accusation against the applicant is based upon earlier property/monetary dispute and rests on presumption rather than any direct incriminating evidence. No specific role of abetment, instigation or facilitation is attributed to her either in the FIR or in statements recorded under Section 161 Cr.P.C.

8. The alleged extra-judicial confession, having been recorded by the police while the applicant was in custody, falls within the mischief of Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984, rendering it inadmissible in evidence unless recorded before a Magistrate under Section 164 Cr.P.C. and duly corroborated by independent material. At this stage, such statement cannot be safely relied upon to establish her direct or indirect participation in the commission of offence, thus brining

the matter within the scope of further inquiry under section 497(2)Cr.P.C. I fortify my view from the following case laws titled as “Ehsan Ullah v.The State”(2012 SCMR 1137), “Saif Ullah v.The State and another” (2019 SCMR 1458),”Najeeb Ullah v. The State and another” (2020 SCMR 1241) and” Muhammad Ramzan v.The State and another” (2021 SCMR 1914)

9. The principle of further inquiry pre-supposes a tentative assessment creating doubt regarding involvement of the accused. Whether the present applicant actually conspired, instigated or aided the absconding accused; whether any admissible evidence supports her alleged participation; and whether ingredients of abetment as defined under Section 107 PPC stand satisfied are questions requiring determination after recording evidence by the Trial Court. The Hon’ble Supreme of Pakistan in case of Salman Mushtaq & others v. The State (2024 SCMR 14) has reiterated that atrociousness or gravity alone cannot be decisive where prosecution’s case lacks prima facie certainty at bail stage. Mere heinousness of offence is not a valid ground to deny bail when the case otherwise qualifies for further inquiry. Reliance is placed in case of Husnain Mustafa v. The State (2019 SCMR 1914). In view of above, the material so far collected does not prima facie depict such certainty which would justify denial of concession of bail to the applicant.

9. Accordingly, the applicant Mst. Hameeda wife of late Ghulam Rasool is admitted to post-arrest bail subject to furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand only) and a personal bond in the like amount to the satisfaction of the trial Court.

10. The observations made herein are tentative in nature and shall not prejudice the case of either party at the trial.

JUDGE

Shabir/P.S