

# IN THE HIGH COURT OF SINDH AT KARACHI

## Criminal Bail Application No.395 of 2025

Applicant : Ahmed Saleem s/o Noor Saleem  
through Mr. Ubedullah Ghoto, Advocate

Respondent : The State  
through Mr. Zahoor Shah Addl. P.G. Sindh.

Date of hearing : 26.03.2025

Date of order : 05.04.2025

## **ORDER**

**KHALID HUSSAIN SHAHANI, J.** – The applicant Ahmed Saleem son of Noor Saleem, seeks post-arrest bail in a case bearing crime No. 542/2022, offence u/s 392/397/34 PPC of Police Station Saeedabad, Karachi. His previous bail plea was declined by the learned Additional District Judge-XI, Karachi West, vide order dated 06.01.2025.

2. The brief facts of the case are that on 29.10.2022, the complainant Abdul Aziz, along with his friend Zafar Washi, was traveling by motorcycle towards Yousuf Goth Terminal. At about 1816 hours, upon reaching near Sharjah Shopping Mall on Hub River Road, Saeedabad, Karachi, they were allegedly intercepted by two unidentified individuals riding a 125cc motorcycle. At gunpoint, the suspects reportedly robbed the complainant of Rs. 80,000 in cash, a mobile phone, a wallet, his wife's CNIC, an Al-Habib Bank ATM, and various other cards. Additionally, Rs.12,500 in cash was robbed from his friend. Based on these allegations, an FIR was registered.

3. At the outset, the learned counsel for the applicant contends that the applicant is innocent and has been falsely implicated. It is argued that Section 397 PPC is not applicable in this case and that, at most, Section 392 PPC should have been invoked. Without proper justification, the registration of the case under Section 397 PPC is unwarranted. The counsel further alleges that the complainant has fabricated the case due to personal enmity, and that no recoveries were made from the applicant; rather, the alleged recoveries were planted. He also highlights the

absence of any independent eyewitnesses to the incident, despite the area being a public and populated place. The counsel maintains that the case warrants further inquiry into the applicant's guilt, which entitles him to bail. The counsel casts doubt on the credibility of the FIR, arguing that it is unlikely that individuals would commit such a bold crime without concealing their identities. Furthermore, the counsel finds the brief interval between the occurrence and the arrest suspicious and states that the offense does not fall within the prohibitory clause of Section 497(1) Cr.P.C. In conclusion, he prays for the grant of bail, relying on the judgments reported in 2024 P.Cr.L.J 1521 and 2012 YLR 151.

4. On the other hand, the learned Assistant Prosecutor General has opposed the bail plea, stating that the applicant was identified by the complainant during a test identification parade. He further argues that the applicant has not shown any motive for false implication, either against the complainant or the police, and that there exists sufficient material on record connecting the accused to the crime in question.

5. A plain reading of the FIR reveals that neither the names nor the physical descriptions of the accused were mentioned. The applicant was arrested on 01.11.2024 and later subjected to a test identification parade on 03.11.2024. According to the memo of the parade, the applicant disclosed before the presiding officer that he had already been shown to the complainant at the police station, raising questions about the credibility and evidentiary value of the identification, which can only be properly assessed during trial. Furthermore, as per the statement of the learned A.P.G., no stolen property has been recovered from the applicant.

6. The applicant is facing charges under Section 397 PPC, which prescribes a minimum punishment of seven years' imprisonment. At this preliminary stage, the critical question is whether the available material is sufficient to justify the denial of bail under Sections 397/34 PPC. For contextual clarity, the provision of Section 397 PPC is reproduced as under:

*397. Robbery or dacoity, with attempt to cause death or grievous hurt. If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.*

7. The minimum punishment prescribed for the offense under Section 397 PPC is a term of imprisonment not less than seven years; as such the offense does not fall within the prohibitory clause of Section 497(1) Cr.P.C.

8. The Hon'ble Supreme Court in the landmark case of Tariq Bashir v. The State (PLD 1995 SC 34) held that in cases not covered under the prohibitory clause of Section 497 Cr.P.C., the grant of bail should be treated as a rule, and refusal as an exception. Further emphasis was laid in the case of Muhammad Tanveer v. The State (PLD 2017 SC 733), wherein the Apex Court observed:

*We are shocked and disturbed to observe that in cases of this nature, not falling within the prohibition contained in Section 497, Cr.P.C., invariably grant of bail is refused on flimsy grounds. This practice should come to an end because the public, particularly accused persons charged for such offences, are unnecessarily burdened with extra expenditure and this Court is heavily taxed because leave petitions in hundreds are piling up in this Court and the diary of the Court is congested with such like petitions. This phenomenon is growing tremendously, thus, cannot be lightly ignored as precious time of the Court is wasted in disposal of such petitions. This Court is purely a constitutional Court to deal with intricate questions of law and Constitution and to lay down guiding principles for the Courts of the country where law points require interpretation.*

9. It is well established that the grant or denial of bail is a discretionary relief; however, such discretion must be exercised judiciously and in accordance with legal principles. Judicial discretion is expected to be guided by fairness and aimed at alleviating undue hardship. In view of the discussion above, it is evident that the applicant has made out a case for further inquiry under the meaning of Section 497(ii) Cr.P.C.

10. Given the above, the applicant is granted post-arrest bail, subject to furnishing a solvent surety in the sum of Rs.100,000/- (Rupees One Lac only) and a personal recognizance bond in the same amount to the satisfaction of the learned trial court. It is clarified that the observations made herein are of a tentative nature and shall have no bearing on the merits of the case during the trial proceedings.

**JUDGE**

Shahbaz/PA