

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.542 of 2025

Applicants : (1) Johan Ebrahim & (2) Tanveer
through Mr. Kelash Rehmani, Advocate

Respondent : The State
through Ms. Hina Asst. P.G. Sindh.

Complainant : Asif Mullani
through Mr. Naseer Shah, Advocate

Date of hearing : 07.04.2025

Date of order : 08.04.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – The applicants Johan Ebrahim & Tanveer, seek post-arrest bail in a case bearing crime No. 31/2024, offence u/s 302/380/34 PPC of Police Station Soldier Bazar, Karachi. Their previous bail plea was declined by the learned Additional Sessions Judge-I, Karachi East, vide order dated 02.12.2024.

2. Precisely, the facts narrated by the complainant Asif Mullani are that on receipt of cell phone call from his sister-in-law residing at London went to the flat of his brother Abdul Sattar and found him dead, his hands and legs tied with ropes. Such information was communicated to police. Consequent upon; case was registered inter-alia on above facts.

3. Learned counsel for the applicants reiterated the grounds stated in the memo of the bail application and primarily contended that although the FIR was lodged on 20.01.2024, the applicants/accused were arrested on 17.02.2024. It was argued that the applicants are not nominated in the FIR, nor has any specific role been assigned to them therein. Their implication in the case rests solely on their alleged confessional statements made before the police, which are inadmissible in evidence under the law. Furthermore, there is no eyewitness account of the alleged incident, nor has any incriminating article been recovered from the possession or on the pointation of the applicants/accused. Any alleged recovery is claimed to be fabricated. It was further argued that there exists no direct or circumstantial evidence on record linking the

applicants/accused with the commission of the offence. The case against them thus requires further inquiry. It was submitted that the applicants are no longer required for investigation, having already been remanded to judicial custody. The learned counsel prayed for the grant of post-arrest bail and placed reliance on *2012 MLD 665 (Sindh)* and *2012 YLR 2056 (Balochistan)* in support of his contentions.

4. Conversely, the learned Assistant Prosecutor General, representing the State and duly assisted by learned counsel for the complainant, vehemently opposed the grant of post-arrest bail to the applicants/accused. It was argued that during the course of investigation, the applicants/accused were arrested and had confessed to the commission of the offence. Furthermore, the applicants/accused pointed out the scene of the crime in the presence of witnesses, whose statements recorded under Section 161 Cr.P.C. fully support the prosecution's case. It was further contended that deceased's mobile phones was recovered from the possession of accused John Ebrahim. The alleged offence is of a heinous nature and falls within the prohibitory clause of Section 497 Cr.P.C. Therefore, the applicants/accused are not entitled to the concession of post-arrest bail.

5. Upon meticulous examination of the material available on record and after hearing the arguments advanced by the learned counsel for the respective parties, it transpires that the case of accused John Ebrahim is distinguishable from that of co-accused Tanveer. The prosecution has brought on record, during the course of investigation, the statements of prosecution witnesses recorded under Section 161 Cr.P.C., which, *prima facie*, substantiate the allegation that accused John Ebrahim committed theft of the deceased's mobile phone and is involved in the alleged offence. Most pertinently, the mobile phone purportedly belonging to the deceased was recovered from the exclusive possession of accused John Ebrahim, who failed to produce any invoice, receipt, or documentary proof evidencing lawful acquisition or ownership of the said device.

6. As regards the plea of alibi taken by accused John Ebrahim, it is observed that the same did not find favor with the investigating agency during the course of investigation and, therefore, at this stage, carries no persuasive value. Furthermore, the recovery of the mobile phone, which was previously unknown to the police and others, stands corroborated by the statements of prosecution witnesses and, in the considered view of

this Court, attracts the applicability of Article 40 of the Qanun-e-Shahadat Order, 1984, which renders admissible that portion of a disclosure made in custody which leads to the discovery of a fact. When assessed in conjunction with the surrounding circumstances and ocular account, this piece of circumstantial evidence, at the bail stage, reasonably connects the accused John Ebrahim with the commission of the alleged offence.

7. In such circumstances, the plea of false implication and absence of direct evidence raised by the learned counsel for the applicant/accused does not hold merit in light of the recovery, which, for the purposes of this bail application, constitutes admissible and relevant material. The determination of guilt or innocence, however, shall be subject to adjudication upon conclusion of trial.

8. On the other hand, the case of co-accused Tanveer appears to rest solely upon his purported extra-judicial confession made while in police custody, which is inadmissible under Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984. No incriminating article has been recovered from his possession, nor has any independent witness attributed any role to him in the commission of the offence. In the absence of substantive or corroborative material connecting him with the occurrence, his case, *prima facie*, appears to be one of further inquiry as contemplated under Section 497(2) Cr.P.C. and, accordingly, he may be entitled to the concession of bail. During arguments, learned APG pointed out that as per FSL report, the CCTV camera recording was not tempered, but the faces of the persons roaming near the venue of occurrence were not visible. The I.O. in report under Section 173 Cr.P.C. also specified that faces of assailants were not visible in CCTV camera recording.

9. In view of the foregoing, the post-arrest bail application of accused John Ebrahim stands dismissed. However, the bail application of accused Tanveer is allowed, and he is admitted to post-arrest bail subject to furnishing solvent surety in the sum of Rs.500,000/- (Rupees Five Hundred Thousand Only) and a P.R. bond in the like amount to the satisfaction of the learned trial Court.

JUDGE

Shahbaz