

IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 2034 of 2024

Present:
Justice Zafar Ahmed Rajput
Justice Adnan Iqbal Chaudhry

Applicant : Nawaz Ali Sarki s/o Majana, through
Mr. Masaud Ahmed Junejo, advocate

Respondent : The State, through Mr. Abrar Ali Khichi, Addl.
P.G. Sindh

Date of hearing : 06.01.2025
Date of order : 06.01.2025

ORDER

ZAFAR AHMED RAJPUT, J. Applicant/accused Nawaz Ali Sarki s/o Majana on being abortive in getting post-arrest bail, vide order dated 29.05.2024, passed by the Anti-Terrorism Court No. X, Karachi in Special Case No. 95 of 2022, through instant application seeks the same relief from this Court in Crime/ F.I.R. No. 1816/2021, registered at P.S. Shah Latif Town, Karachi under section 365-A, 512, 34, P.P.C. read with section 7 of the Anti-terrorism Act, 1997 (“**Act of 1997**”).

2. Brief facts of the prosecution case are that, on 18.11.2021 at about 0015 hrs. complainant Malik Muhammad Afzal lodged F.I.R. to the effect that his son, Ubaidullah Malik, 23, runs an Estate Agency in the name and style of “Al-Noor Estate Agency”, at Fatima Dream City, Shedi Khan Road, Malir, Karachi and usually he returned back to home around 7:00 pm daily; however, on 17.11.2021, he did not return to home as per routine; hence, he tried to contact him on his cell phone but his calls were not attended till 08:00 pm; as such, he got worried; meanwhile office boy, Abdul Rehman, informed him on phone that at about 04:00 p.m. his son went out from his Estate Agency along with three persons for showing plots but he did not return back, and his motorcycle was parked at the Estate Agency, whereupon he along with his another son, Muhammad Ahmed went to the Estate Agency, where on checking CCTV cameras, he came to know

that three persons had come in the Agency and then they walked out with his son and went away in a car. Accordingly, he informed on 15 Madadgar, and then his son's cell phone switched off around 10:00 pm. Hence, the complainant lodged the aforesaid F.I.R. against three un-known accused persons.

3. Learned counsel for the applicant has contended that the applicant is innocent and has falsely been implicated in this case; that neither any description of the accused persons is mentioned in the F.I.R. nor any specific role has been assigned to the applicant in the commission of alleged offence and the allegations against him are of general nature; that no identification test of the applicant through abductee has been held before any Judicial Magistrate; that as per memo of recovery no mobile phone was recovered by the I.O.; as such, the CDR record submitted by the I.O. has no evidentiary value; that nothing incriminating has been recovered from possession of the applicant and the alleged crime weapon has been foisted upon him; that as per statement of the abductee, applicant was not present in the CCTV footage of the place of incident; that the applicant has no concern with the alleged recovered vehicle; that the applicant is disable from his left arm due to which he is facing great tribulation; that co-accused Jiand Ali Janweri has been granted bail; therefore, on the rule of consistency the applicant is also entitled to the same concession.

4. On the other hand, learned Addl. P. G has opposed this application on the ground that the F.I.R. was lodged against unknown person and prosecution has no motive to implicate the applicant falsely in this case; that the abductee was recovered from custody of the accused persons and from their possession police has recovered unlicensed arms and ammunition; that the prosecution has sufficient evidence against the applicant to connect him with the commission of alleged offence; hence, he is not entitled to concession of bail.

5. Heard. Record perused.

6. It appears from the perusal of the record that after registration of the F.I.R., I.O. S.I.P. Shahzado Khan conducted investigation and obtained CCTV footage in USB. On 02.12.2021, complainant informed him that he had received a call demanding for ransom of Rs.2 Crore; hence, section 365-A P.P.C. was added in the case and the investigation was handed over to AVCC/CIA. On 05.01.2022, second I.O. Inspector Malik Ashraf of AVCC/CIA, on the spy information stopped a car bearing No. PL-3826 at Indus Highway and apprehended four persons, namely, (i) Sabir Ali Khushk s/o. Andal Khan, armed with on unlicensed 30 bore pistol with magazine and five live rounds, (ii) Nawaz Ali Sarki s/o. Majana (*applicant*), armed with on unlicensed 30 bore pistol with magazine and four live rounds, (iii) Jiand Janwri s/o. Hameer Ali, armed with on unlicensed 30 bore pistol with magazine and four live rounds and (iv) Saddam Hussain s/o. Bakhshal, armed with on unlicensed 30 bore pistol with magazine and five live rounds. On further search between the seats of vehicle, abductee Ubaidullah was secured, whose hands and foots were tied with rope and was blind folded with a black cloth. Later on, it transpired that (1) Muhammad Bux (2) Abdul Ghani and (3) Jan Muhammad were accomplices of the arrested accused persons for commission of alleged offence. The accused persons were identified through CCTV installed in Al-Noor Dream City.

7. From the tentative assessment of the evidence on record, it appears that *prima facie* prosecution has sufficient material against the applicant to connect him with the commission of alleged offence carrying punishment under section 365-A, PPC read with section 7 of the Act of 1997 with death or imprisonment for life, which falls within prohibitory clause of section 497, Cr. P.C. No case for granting bail to applicant on the ground of further inquiry has been made out. The claim with regard to false implication of the applicant is an issue that cannot be attended without going beyond the scope of tentative assessment, an attempt prohibited by law. As regards non-mentioning of description of the applicant,

suffice it to say that the complainant is not the eye-witness of the incident; hence he is not expected to get the description of the accused persons mentioned in the F.I.R. No identification test of the applicant through abductee is required to be held as he was recovered by the police from the possession of aforementioned four accused persons, and the abductee can identify the applicant or otherwise at the time of recording his evidence before the trial Court. Co-accused Jiand Ali Janweri has been granted bail on medical ground as he was suffering from cancer; however, the applicant is receiving in jail proper medication and his illness does not appear to be of such a degree that his admission to bail is necessary to save his life.

8. As a result of above discussion, the instant criminal bail application is rejected leaving the applicant at liberty to repeat the same before the Trial Court in case fresh grounds are available to him after examination of the victim/abductee and complainant, if so advised.

9. Needless to mention that the above observations are tentative in nature for the disposal of this bail application and the same shall not influence the Trial Court while deciding the case of the applicant on merits.

10. Above are the reasons of our short order, dated 06.01.2025, whereby the instant applications were dismissed.

JUDGE

JUDGE

Athar Zai