

## IN THE HIGH COURT OF SINDH AT KARACHI

### Criminal Bail Application No.2267 of 2024

Applicant : Abdul Rehman @ Mani son of Zafar Mehmood  
through Mr. Muhammad Akber Awan, advocate

Respondent : The State  
Through Ms. Rahat Ahsan, APG Sindh.

Date of hearing : 15.05.2025

Date of order : 19.05.2025

### **ORDER**

**KHALID HUSSAIN SHAHANI, J.** – The applicant Abdul Rehman @ Mani, seeks post-arrest bail in a case bearing crime No. 799/2022, registered at Police Station Sharah-e-Faisal, Karachi, offence under Sections 397, 302, 34 PPC. Previously bail of accused was declined by the learned Additional Sessions Judge-XII Karachi East vide order dated 05.09.2024.

2. According to prosecution theory, the complainant, owner of a bakery shop in Gulistan-e-Jauhar, stated that on 29.08.2022, at about 0130 hours, four unknown armed assailants on two motorcycles forcibly entered his shop. Two accused remained outside while two entered the shop and committed robbery, snatching Rs.50,000 from the complainant's counter, Rs.5,000 from a customer Mustafa, and a mobile phone from the complainant's son Abdul Jalil. During the incident, a customer named Kamran tried to resist and was shot by one of the accused, suffering injuries that later proved fatal. The accused escaped from the scene. Consequent upon; case was registered inter-alia on above facts.

3. The present applicant was arrested on 13.10.2023, more than 13 months after the occurrence, and was later remanded to judicial custody. A supplementary challan was submitted on 23.01.2024, naming him as an accused, based on the implication by a co-accused in his confessional statement recorded under Section 164 Cr.P.C.

4. Learned counsel contended that the applicant was not named in the FIR, which was lodged against unknown assailants. He further argued that accused arrest was delayed by over a year without any cogent explanation.

The applicant was not subjected to a test identification parade, despite the availability of eye-witnesses, which fatally undermines the prosecution case. The only material against the applicant is the statement of co-accused under Section 164 Cr.P.C, which, being an extra-judicial confession, has no evidentiary value against a co-accused unless independently corroborated, which is lacking in this case. Though a USB containing CCTV footage was secured from the scene, it was not sent for forensic analysis, nor matched through Face Recognition System (FRS), allegedly due to the accused wearing a mask. There is no recovery of any incriminating article, either from the possession of the applicant or on his pointation. The applicant is behind bars since 13.10.2023 and the case has not proceeded further owing to the IO's failure to pursue the supplementary challan. The accused has not even been produced on video link for several months. The applicant has no previous conviction and is a permanent resident of Karachi, thereby posing no flight risk. Learned counsel placed reliance on the following judgments:

- *2012 SCMR 662, where bail was granted due to lack of direct role and absence of motive.*
- *2024 SCMR 205, where the Supreme Court held that reliance on unverified photographs without forensic validation rendered the case unsafe for refusing bail.*
- *2023 SCMR 1514, where bail was granted due to lack of direct evidence and where the only material was a confessional statement of a co-accused under Section 164 Cr.P.C.*

5. It was lastly argued that the case against the applicant requires further inquiry, entitling him to bail under Section 497(2) Cr.P.C.

6. Conversely, the learned APG opposed the grant of bail, arguing that CCTV footage obtained from the crime scene clearly depicts the presence and movement of the accused and his co-associates during the commission of the offence. The prosecution maintains that the applicant is visible in the footage, and though the footage was not sent for forensic analysis, the visual evidence was sufficient to implicate him. The test identification parade was conducted as per the trial court's direction, during which the accused was identified by a witness. The applicant's assertion to the contrary is incorrect. Statement of co-accused Shoaib under Section 164 Cr.P.C implicates the present applicant, and while such a statement may not be substantive evidence on its own, it can be read in conjunction with other material, including circumstantial and digital evidence. The applicant has a criminal history, and CRO reports indicate involvement in similar past

cases, thereby diminishing the presumption of innocence at this stage. The offence under Section 302 PPC is a capital offence, which carries the death penalty, and the applicant's release at this stage would endanger public peace and justice. The learned APG thus prayed for dismissal of the bail application.

7. After hearing learned counsel for the parties and perusal of available material on record, it has been emerged that there was no nomination of the applicant in the FIR and long delay in arrest remain significant. The applicant was arrested after more than a year of the incident. No explanation has been furnished by the prosecution for such a delay. Though the CCTV footage is claimed to show the applicant, the face recognition system i.e. FRS System of NADRA failed due to the mask, and more importantly, the USB was never sent for forensic analysis. Hence, at this stage, such footage does not fulfill the evidentiary standard required for denial of bail in a capital offence. The test identification parade, as per record, was not conducted for the present applicant, which casts doubt upon the identification process, especially in the absence of prior naming in the FIR. The only material connecting the accused is the statement of a co-accused under Section 164 Cr.P.C, which has limited evidentiary value against a co-accused unless corroborated by independent evidence, which is lacking here. The CRO record, though suggestive, has not been placed on record in sufficient detail to establish habituality at this stage. In any case, the applicant has not been convicted in the past.

8. The investigative delay and procedural lapse, including the stagnation of supplementary challan in the Court, reflects adversely on the prosecution's diligence and raises the question of fair trial rights under Article 10-A of the Constitution.

9. In view of the above discussion and relying upon the dicta laid down in 2012 SCMR 662, 2023 SCMR 1514, and 2024 SCMR 205, the case of the applicant calls for further inquiry within the meaning of Section 497(2) Cr.P.C. No recovery has been effected, no identification parade conducted for the present applicant, and the prosecution's reliance upon unverified digital evidence further weakens the case. Accordingly, the applicant Abdul Rehman @ Mani is admitted to post-arrest bail subject to his furnishing a solvent surety in the sum of Rs.500,000/- (Rupees Five Hundred Thousand

only) with P.R. bond in the like amount to the satisfaction of the learned trial Court.

10. Needless to mention, that any observation herein is tentative in nature and shall not prejudice the trial proceedings.

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