

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

**Criminal Bail Application No.D-37 of 2025**

**Before:**

***Mr. Justice Arshad Hussain Khan.***

***Mr. Justice Dr. Syed Fiaz ul Hassan Shah.***

Applicant: Karim Bux alias Karu son of Sulleman Khoso.  
Through Mr. Ghulam Kalsoom Gopang, Advocate.

Complainant: Through M/s Naveed Abbas Kharal and Abdul Hafeez,  
Advocates.

Respondent: The State  
Through Ms. Safa Hisbani, A.P.G.

Date of hearing: 20.05.2025

Date of Order: 20.05.2025

**ORDER**

**Dr. Syed Fiaz ul Hassan Shah, J:** Through instant bail application, above named applicant seeks his admission to post arrest bail in Crime No.52 of 2023 registered under sections 302, 324, 337-H(ii), 396, 397 PPC r/w Section 6/7 ATA, with P.

2. The factual circumstances leading to the initiation of the present case are as follows: The complainant, Noot Khan, son of Mir Gul Mari, duly registered FIR No. 52/2023 at the police station Kazi Ahmed on February 20, 2023, at 1830 hours. Within his FIR, he stated that he operates a business involving animals. On the same date, at approximately 04:00 AM (Fajr time), he, together with his brother Pir Bux Mari, aged 42, his uncle Tagio, aged 63, and relatives Sahib Khan son of Sher Khan Mari, Ghulam Bux son of Bahawal Mari, and Jalan Khan son of Palya Khan Mari departed their residences for the Chandan Shakh Mouri, National Highway Road near Jhangara Mal Piri. They were awaiting

transportation. At around 04:00 AM, six individuals arrived at the location on two 125 Motorcycles, armed with KKs and repeaters. Upon arrival, they dismounted their motorcycles and, brandishing their weapons, compelled Noot Khan and the aforementioned / Vindividuals to sit on the ground. Subsequently, one of the accused, armed with a KK, forcibly took Rs. 6,50,000/- from the complainant. Upon resisting, the assailants with KKs and repeaters opened fire on Pir Bux Mari, Tagio Khan Mari, and Sahib Khan Mari, causing them serious injuries, resulting in their collapse to the ground. Following this, the attackers fired indiscriminately to foster a sense of insecurity and fear, prompting nearby residents to converge at the scene. Observing this, assailants abandoned one Red colour 125 Motorcycle, which was pending registration (Engine No. T233936, Chassis No. EB900730), and fled towards the jungle, while their three associates departed the scene on another motorcycle. At the scene, Tagio Khan Mari succumbed to his firearm injuries. The injured individuals, along with the deceased, were initially taken to the civil hospital in Kazi Ahmed for the treatment of the injured and the postmortem of the deceased. However, while en route, Pir Bux Mari also succumbed to his injuries; he was subsequently transported back to civil hospital Kazi Ahmed for postmortem, leaving the injured at PMCH, Nawabshah, for continued treatment. Following these events, the FIR was lodged against unknown perpetrators for alleged dacoity, murders and causing fire arm injuries to injured Sahib Khan Mari.

3. It is inter-alia contended by the counsel for applicant that applicant/accused is innocent and has falsely been involved in

this case by the complainant; that in fact no such incident whatsoever stated in the FIR has ever taken place, but this whole drama has been staged and managed by the complainant with malafide intention for ulterior reasons, actual facts are that on 10-03-2024 at about 02:00 Pm, the police officials namely SHO Sanaullah Panhwar of PS Kazi Ahmed including 7/8 other police officials of PS Kazi Ahmed came at the house of applicant/accused and conducted the raid at their house without any search warrant or any complaint and arrested the applicant/accused and started maltreatment with him and where the SHO demanded the ransom amount of Rs:2,00,000/- for the release of the applicant/accused and on the refusal of the payment, the SHO issued threats that he will full fry or half fry or would implicate the applicant/accused in false cases, and when nothing could be done, on which the father of applicant/accused namely Ali Bux filed Cr Misc Application No. 74 of 2023 RE-Ali Bux VS SHO PS Kazi Ahmed, Application Under Section 491 Cr PC before Honourable Sessions Judge Shaheed Benazirabad, the same was transferred to Honourable 2nd Additional Sessions Judge Shaheed Benazirabad in which report has been submitted and shown the applicant/accused to be involved in Crime No. 51 of 2023 lodged by complainant Allah Dito on 20-02-2023 by showing the further statement to be recorded on 10-03-2023 besides this the false implication of the applicant/accused also shown in present case crime No. 52 of 2023 in which too the name of the applicant/accused has been shown in further statement recorded on 17-03-2023 and by this way, the applicant/accused has been falsely implicated by the complainant

which requires further enquiry; that as per the facts of the FIR, the place of incident is thickly populated thoroughfare area and there is round the clocks persons/passersby roaming here and there, but no one has seen such scene, except complainant and his PWs, which create doubt in the prosecution story and also makes the applicant/accused entitle for the concession of bail; that there is direct, indirect role, part overt act assigned to the applicant/accused, mere there is general allegations against the applicant/accused and it is yet to be determined at the time of trial as to whether the applicant/accused shared his intention into the alleged commission of offence; that the applicant/accused is neither hardened, nor criminal nor desperate person, as per instructions; that nothing has been recovered from the physical possession of the applicant/accused, but things alleged in the FIR has been foisted by the complainant against the applicant/accused; that the applicant/accused is a previous non convicted, non-record holder and belongs to a very respectable family, there is no possibilities of his absconding or tempering with the prosecution evidence, since the investigation of the case has already been completed and the record is with the prosecution; that except solidary words of the complainant and his PWs there are no reasonable grounds or evidence to believe that the applicant/accused has committed the alleged offence; that challan has been submitted before the Trial Court, the applicant is no more required for investigation and there is no apprehension that the applicant is attempting to temper or destroy the prosecution's evidence. He lastly prayed for justice.

4. On the other hand, learned counsel for the complainant as well as learned APG for the State have vehemently opposed the bail application on the ground that although the applicant is not named in the FIR, he has been implicated by eyewitnesses in their statements under Section 161 of the Criminal Procedure Code (Cr.P.C.), as well as by the complainant in his subsequent statement. These statements allege his involvement in committing two murders, inflicting firearm injuries on prosecution witness Sahib Khan Mari, and robbing Rs.6,50,000/- from the complainant; that applicant is a habitual offender and an active member of a notorious criminal group, involved in numerous robberies and murders in the area. Legally, it is not necessary to detail every aspect in the FIR, as it is the responsibility of the police to conduct investigations, apprehend the actual culprits, and submit a report before the court for trial; that the applicant is also involved in Crime No. 51/2023 under unspecified sections registered with PS Kazi Ahmed, and the current crime. At the bail stage, it is not advisable to delineate the roles of the accused, as this would necessitate a deeper appreciation of evidence, an exercise not suitable for the bail stage as established by the honorable higher courts in various rulings; that the prosecutor highlighted that the trial has already commenced, and up to now, the examination-in-chief of four prosecution witnesses has been recorded by this court, with their cross-examination reserved at the request of counsel representing different accused in the current case therefore, applicant is not entitled to the concession of bail at this stage in a heinous offence which fall within the prohibitory clause of section 497 Cr.P.C.

5. We have heard the learned counsel for parties and perused the record.
6. Upon perusal of the record, it has been observed that this case pertains to a **double murder incident**. The FIR has lodged by the **star witness** who is also injured victim in the case. According to the complaint, the attack involved six assailants—two on motorcycles-125, two armed with **Kalashnikovs**, two carrying **Repeater guns**, and two equipped with **pistols**. These individuals allegedly fired upon and killed Pir Bux Mari and Tagio Khan Mari, while Sahib Khan Mari sustained injuries alongside the complainant Noot Khan.
7. The **FIR** was initially registered against **six unknown persons**, without any huliya or features of the culprits and for this reason no **specific role** attributed to the applicant in the commission of the offence and obviously the prosecution is under burden to proof the case as who had fired that cause death or that caused injury.
8. We have noticed an unignorable error that after a considerable delay of **28 days** a supplementary statement was recorded under Section 162 Cr.P.C on **17.03.2022** and in that further statement the name of the Applicant was implicated in the case in hand. The prosecution has not given plausible explanation or valid justification firstly as to why the names of Applicant Accused have not been given in the first Statement under Section 161 Cr.P.C and secondly the considerable delay in recording further Statement under section 162 Cr.P.C. after 28 days of delay.
9. This delay and the absence of a direct allegation against the applicant may be **significant factors** requiring further judicial scrutiny in determining the applicant's involvement in the case. In

case of “*Abdul Khaliq Vs. the State (1996 SCMR-1553)*”, it has been held by Hon’ble Supreme Court that:

“It is a settled position of law that late recording of 161, Cr. P.C. statement of a prosecution witness reduces its value to nil unless there is plausible explanation for such delay.”

10. The second important aspect of the prosecution is the infirmity about non holding the identification parade of the Applicant when he was not nominated in the FIR. Even otherwise process of identification of an **article** is also required to be conducted by the Magistrate in the same fashion as he does for identification of a suspect. This has been explained in law in terms that evidentiary value of identification parade as being relevant fact in the form of explanatory evidence is regulated under Article 22 of Qanun-e-Shahadat Order, 1984, the relevant part may be read as under:

22. Facts necessary to explain or introduce relevant facts: **Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact**, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue, or relevant fact happened, or Which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

(Emphasis supplied)

11. It is well settled that in cases where the names of culprits are not mentioned, holding of test identification parade becomes mandatory. Reliance in this regard can be placed on the case of

**“Farman Ali v. The State” [1997 SCMR 971]**, wherein the Honourable Supreme Court of Pakistan, inter alia, has held:

“7. Holding of identification test becomes necessary in cases, where names of the culprits are not given in the F.I.R., holding of such test is a check against false implication and it is a good piece of evidence against the genuine culprits.....”

12. The only evidence as per the vociferous arguments of learned counsel for the complainant and A.P.G for the State is the recovery of motorcycle-125 from the crime scene. According to the prosecution, the motorcycle in question was abandoned by the culprits at the time of the commission of the offenses of double murder and subsequently seized by the police in Crime /FIR No.52/2023. Further investigation revealed that this motorcycle was originally snatched on **01.02.2023** within the jurisdiction of **PS Balo Ja Qubba**, leading to the registration of **FIR No. 20/2023** which was registered on **17.03.2023** at the same police station. The prosecution asserts that the Applicant was a **nominated accused** in FIR No. 20/2023, establishing a direct link between the Applicant and the initial act of snatching the **Motorcycle 125** on **01.02.2023**. It is further alleged that the Applicant, along with other culprits, subsequently committed **homicide** within the jurisdiction of **PS Kazi Ahmed**, an offense registered under **FIR No. 52/2023**. This sequence of events forms the basis of the prosecution’s case, connecting the Applicant to both the snatching incident and the subsequent homicide.
13. The Applicant has effectively rebutted the prosecution’s case, which is primarily built on the interconnected link between FIR No. 20/2023 (**Snatching**) and FIR No. 52/2023 (**Homicide**).



- i. **Judgment of Acquittal:** The 2nd Additional Sessions Judge, Shaheed Benazirabad, passed a judgment of acquittal on 02.05.2024 in Crime No. 20/2023, ruling in favor of the Applicant, Kareem Bux.
- ii. **Delayed FIR Registration:** The FIR No. 20/2023 was registered on 17.03.2024, 37 days after the alleged snatching incident on 01.02.2024, raising concerns about considerable delays and the Applicant's nomination in the case.
- iii. **Judicial Magistrate's Report:** The Raiding Magistrate's report is a crucial piece of evidence. It confirms that the Applicant was arrested on 14.03.2023, yet no record or memo of arrest was prepared by the police. Furthermore, the Applicant's brother filed Criminal Misc. Application No. 740 of 2023 before the Sessions Judge, Shaheed Benazirabad, which was allowed on 14.03.2023.
- iv. **Unlawful Incarceration:** The Raiding Magistrate's report, available at Page-63 to 65 confirmed that neither the Memorandum of Arrest was available on 14.03.2023 when the Raiding Magistrate found the Applicant in the lockup of Police Station nor any entry in the Daily Roznamcha Register No.II was available.

**14.** If there are apparent indications of manipulation or design on the part of the investigating agency in constructing a case based solely on **circumstantial evidence**, the Court must exercise **heightened vigilance** to avoid being misled into a false inference. This principle underscores the necessity for courts to

critically evaluate circumstantial evidence, ensuring that convictions are based on **credible, interlinked, and legally admissible proof**. The Courts regulate and enforce such legal principles by exercising jurisdiction which is derived from **constitutional mandates, legislative enactments**, and established **judicial precedents**, ensuring that legal principles are applied consistently and fairly. Reliance is placed on the case titled *“Hashim Qasim and another Vs. The State” (2017 SCMR 986)*.

15. We have also noticed that neither any weapons have been recovered nor any robbed amount was recovered from the possession of the applicant and the case is hanging around circumstantial evidence due to failure of Investigation Officer to recover the crime weapons and robbed amount.
16. The criterion for determining whether **circumstantial evidence** can sustain a conviction is based on a well-recognized principle reiterated in various judicial precedents. The courts have consistently held that circumstantial evidence must be (1) **Cogent and convincing**, leaving no reasonable doubt (2) **Closely linked**, forming an unbroken chain leading to the conclusion of guilt and (3) **Excluding all other hypotheses**, ensuring that no other reasonable explanation exists. The reliance on circumstantial evidence must be firmly rooted in legal standards, ensuring that the accused is not convicted based on mere conjecture or weak inferences. It is well established law that in the absence of **direct evidence**, a witness failing to meet the requirements of **Article 71 of the Qanun-e-Shahadat Order, 1984** cannot qualify as a direct witness. In cases where the crime or offense is unseen,

unwitnessed, or based on **hearsay evidence**, the prosecution must rely on strong **circumstantial evidence** to establish guilt. Reliance can be placed on the case report as “**Aseem Khan And Another V. Mujahid Khan and other**”, (2016 SCMR 274). It was held that:

“31. As discussed earlier, the entire case of the prosecution is based on circumstantial evidence. The principal of law, consistently laid down by this Court is that different pieces of such evidence has to make on chain, an unbroken on where one end of it touches the dead body and the other the neck of the accused. In case of any missing link in the chain, the whole chain is broken and no conviction can be recorded in crimes entailing capital punishment.”

17. The Challan has been submitted before the trial and the Applicant is no more required for investigation. Therefore, no fruitful purpose would be achieved while to keep the Applicant into incarceration for an indefinite period of trial. The prosecution has not shown any apprehension that the applicant will cause any damage to the evidence or can intimidate the prosecution witnesses in case he is released on bail.
18. Under **Section 497, Cr.P.C**, the prosecution must present **concrete evidence** establishing ‘**reasonable grounds**’ that the accused committed an offense within the **prohibitory limb** of the law. Conversely, the accused must demonstrate that the prosecution’s evidence creates reasonable doubt, warranting bail. This principle ensures **fair adjudication** and prevents arbitrary detention. Reliance can be placed on the case reported as “**Zaigham Ashraf vs. The State & others**” (2016 SCMR 18).

19. The applicant has already confined almost for two years. In our tentative assessment the case of the applicant squarely falls within sub-section 2 of Section 497 Cr.P.C. being of further inquiry due to above enumerated reasons including the unavailability of name in the FIR, unavailability of features in the FIR or in Statement of PWs or failure to draw sketch by the Investigation Officer, failure to conduct the identification parade and the implication of Applicant through further Statement under section 162 Cr.P.C. after delay of 27 days from the incident and his incarceration by developing link from another crime of snatching on account of **circumstantial evidence** which has successfully broken down by the Applicant by producing Judgment of acquittal as referred above.
20. Therefore, the applicant is admitted to concession of post arrest bail in the sum of Rs.200,000/- and PR bond in the like amount to the satisfaction of the trial Court.
21. It may be observed that any finding given or the observations recorded hereinabove is only for the purpose of deciding this bail application by way of tentative assessment, which will not affect the merits of case before the Trial Court in any manner and the Trial Court will try the case without being influenced from above-referred observations and findings.

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Ahmed/Pa,