

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Bail Application No.S-797 of 2024
[Waqar Qureshi Vs. The State]

Criminal Bail Application No.S-1361 of 2024
[Ateeq @ Ateeque-ur-Rehman Vs. The State]

Mr. Sameeullah Rind, Advocate for applicant in Criminal Bail Application No.S-1361 of 2024.

Mr. Faizan Ahmed Memon, Advocate for applicant in Criminal Bail Application No.S-797 of 2024.

Mr. Sahib Khan Panhwar, Advocate for complainant.

Ms. Rameshan Oad, Assistant Prosecutor General, Sindh.

Date of hearing: 26.03.2025

Date of order: 26.03.2025

ORDER

Dr. Syed Fiaz ul Hassan Shah, J: Through the captioned bail applications filed by the applicants, Waqar Qureshi and Ateeque @ Ateeque-ur-Rehman, for their release on post-arrest bail, arising out of the same FIR No. 170 of 2024 registered at Police Station Hatri, Hyderabad, under Sections 302, 109, and 34 PPC pertaining to one and the same incident, therefore, through this single order, the aforesaid matters are being decided together.

2. As per FIR, lodged by the complainant Muhammad Aslam, his 20-year-old son, Muhammad Waleed, had illicit relationship with one co-accused Mrs. Rashida Parveen @ Hina, wife of Faizan Rajpoot. The deceased was advised by family to abstain himself from this relationship,

which seemingly offended said lady. On the night of 13.08.2024, the deceased left the house with his friend who is now accused Zubair Qureshi under the pretext of work. At around 12:30 A.M, later, the applicant Waqar Qureshi informed the complainant that Muhammad Waleed had succumbed to a firearm injury near Dargah Tulri Baba Line, Hyderabad. Upon arrival at Civil Hospital, the complainant identified the deceased's body bearing a head injury. The complainant alleged that between 11:00 PM to 11:30 PM, accused Zubair Qureshi, in connivance with applicant / accused Ateeq Qureshi and on the instigation of Mrs. Rashida, murdered the Muhammad Waleed (now deceased). Both present applicants are now seeking post-arrest bail.

3. Learned counsel for the applicant-Waqar Qureshi has argued that co-accused Mst. Rashida alias Hina has been granted bail by the learned Trial Court; therefore, based on the principle of consistency, the applicant is also entitled to bail. He also argued that there is no direct evidence connecting him to the commission of the offence. He emphasized that initially applicant Waqar was not named in the FIR, however, later the complainant implicated him on the basis of the statement of co-accused Zubair Qureshi. He urged that actually being friend of applicant / accused Ateeq Rehman, he passed information to the complainant about the death of deceased Muhammad Waleed and he had also visited Civil Hospital to inquire about the deceased Muhammad Waleed. He argued that applicant / accused Waqar Qureshi was neither available at place of incident nor he took part in the commission of offence even the CDR was not collected by the investigating officer to confirm the presence of applicants at place of incident / crime scene.

4. It is further contended by learned counsel for that no role has assigned against the applicant Ateeque @ Ateeq-ur-Rehman and only his name has been included in the FIR. He further argued that as per

contents of FIR, the present applicant facilitated co-accused Zubair Qureshi on the instigation of Mrs. Rashida Parveen @ Hina for commission of alleged offence but the incident is unseen one and no record is available with the prosecution to establish or develop link and it is nothing on record that how it came to know regarding involvement of applicant / accused Ateeq. He further urged that mere presence of accused at place of occurrence with co-accused is not sufficient to attract the provisions of section 34 PPC. He further submitted that doctor has opined that death of deceased is caused by firearm injury which is not caused by present accused, therefore, question of common intention could best be examined after recording evidence.

5. On the contrary, the learned Assistant Prosecutor General, assisted by learned counsel for the complainant Muhammad Aslam, vehemently opposed the bail application and submitted that sufficient material is available on record which prima facie connects the applicants with the commission of heinous offence of murder. The postmortem report, statements under Section 161 CrPC, and other circumstantial evidence support the prosecution's case, therefore, they are not entitled for concession of bail.

6. I have heard the learned counsels for the respective parties and perused the record.

7. The record shows that the applicants (Waqar and Ateeque) were friends of the deceased, (Muhammad Waleed) and also relationship with co-accused, Mst. Rashida alias Hina. It further appears from the record that the deceased was taken to the place of the incident by applicants along-with co-accused Zubair, where he was later murdered. In the FIR, the name of Ateeque was specifically mentioned, while Waqar was initially treated as a prosecution witness who initially misled father / complainant regarding death of his son, Muhammad Waleed. However,

later during the course of investigation it has revealed that he is also involved in the crime. Additionally, the video footage shows both applicants were lastly seen with deceased and have stated before police that the occurrence is incident of robbery and deceased was killed during robbery.

8. It may be observed that the applicant Waqar Qureshi was not initially nominated in the FIR as accused, his implication based on **subsequent contra statements** and his **own conduct** created strong suspicion in the mind of Investigation Officer. The plea that he merely informed the family about the death of deceased is untenable as the victim before his death was seen with the applicants as per applicants' own version. The prosecution has not only material about last seen evidence but the false story of robbery and misleading to police creates serious link of the applicants with the commission of offence. Therefore, subsequent involvement of applicants / accused during investigation based on corroborative material can be a valid basis to deny bail where nexus is reasonably established. The assertion that the **CDR was not collected** is a matter for **trial**, and not a ground for bail as certainly other circumstantial links are developed and available with prosecution.

9. While it has been argued on behalf of the applicant Ateeque @ Ateeque-ur-Rehman that no overt act is attributed to him, it is a settled principle that in **cases of murder under Section 302 read with 34 PPC**, **common intention** can be inferred from conduct, association, and presence of mind before, during, or after the occurrence. The FIR specifically alleges **facilitation** in the commission of offence. It is well settled that facilitation and conspiracy in murder cases require deeper probe which cannot be undertaken at bail stage. The contention that he was only "present" is not tenable in light of the **doctrine of vicarious**

liability under Section 34 PPC which applies to those acting in furtherance of common intention.

10. Reliance can be placed on **“Syed Raza Hussain Bukhari Vs. The State (PLD 2020 SC 743)** wherein the Hon’ble Supreme Court has held:

4. The first part of Section 497(1) Cr.P.C. provides that if a person accused of a non-bailable offence is arrested, he may be released on bail. Because of the enabling expression, "may be released on bail", used in this part, read with the basic principles of criminal justice, the grant of bail in a non-bailable offence that does not fall within the second part of Section 497(1) Cr.P.C. is said to be a rule and refusal, an exception. The second part of Section 497(1) Cr.P.C. provides that an accused shall not be released on bail if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years. This part of Section 497(1) Cr.P.C. which prohibits the grant of bail in certain offences is popularly known as the prohibitory clause of Section 497(1) Cr.P.C.

11. The statement of co-accused and her admission that at the time of commission of offence both applicants were accompanying the deceased is sufficient to link the involvement of the applicants and the commission of offence notwithstanding the fact that one of the applicant initially cited as prosecution’s witness and circumstantial evidence have come on record during investigation followed by misleading, false statements. In my tentative assessment it demonstrates that the prosecution has enough material to connect the applicants particularly the last seen evidence coupled with the admission of applicants about this fact. The offence falls under prohibitory clause; the grant or refusal of the bail is a discretion of the Court. Prima facie, the case of the applicants does not fall within the provisions of sub-section (2) of section 497 Cr.P.C, therefore, at this stage, I am not inclined to grant concession of post-arrest bail to the accused / applicants. However, they are at liberty to

move fresh bail application before the trial Court after recording of material prosecution's witnesses.

12. These are the reasons of short order dated 26.03.2025.

13. Needless to say that any finding given or the observations recorded herein-above, it is only for the purpose of deciding the bail applications, 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 any observation.

J U D G E

Muhammad Danish