IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Zafar Ahmed Rajput
Mr. Justice Dr. Syed Fiaz ul Hassan Shah

Criminal Bail Application No.1283 of 2025
Criminal Bail Application No.1284 of 2025

Applicant [in both applications]	:	Shabbirullah S/o Muhammad Khan through Mr. Muhammad Asghar, Advocate
Respondent	:	The State: through Mr. Abrar Ali Khichi, Addl. P.G.
Date of hearing	:	23.06.2025
Date of order	:	23.06.2025

O R D E R

DR. SYED FIAZ UL HASSAN SHAH J. - By this common Order, we intend to dispose of both the Criminal Bail Applications filed by the above-named Applicant, who is seeking post-arrest bail in Crime No.48/2024 for the offence under Section 353, 324, 345 PPC R/w Section 7 ATA, 1997 registered at PS AVCC/CIA and Crime No.102/2024 U/s 365-A, 34 PPC R/w 7 ATA, 1997 registered at PS Bahadurabad. His bail plea has been declined by learned Judge, Anti-Terrorism Court-XX, Karachi vide order dated 13.06.2024 in both the aforesaid crimes.

2. Brief facts of the case as mentioned in the FIR No.102/2024 lodged by complainant Mati-ur-Rehman are that on 03-04-2024 his elder brother namely Shahid and his nephew Mohammad Abdullah had contacted online with one Sohail, who told to Mohammad Abdullah

for sending him to Italy for paying an amount of Rs: 35,00,000/-. Sohail also directed them to reach at Karachi Lal Qila Bahadurabad for their finger prints scanning. On 04.04.2024 at about 1700 hours complainant Mati-ur-Rehman, his elder brother Mian Shahid, nephew Abdullah and one relative Jamal Tariq had reached at Lal Qila where complainant and Tariq were sitting in the car and his brother and his nephew were communicating with Sohail and during such communication they sat in the car of Sohail. As and when car was started to move, the complainant party also chasing them but due to rush of traffic they did not chase them. Complainant also contacted with his nephew Abdullah on his mobile phone No: 0308-8700019 who told him that he would send his location. After one or one and half hours the mobile phone numbers of his elder brother and his nephew were found switched off. Therefore, the complainant approached to PS where he registered the instant FIR. So far as Crime No.48/2024 is concerned, complainant Inspector Abid Hussain alongwith police party was busy in investigating the Crime No.102/2024. During the investigation, one spy informed that eight persons had kidnapped two persons in a plot located at Baldia Town. Upon such information, the police party reached at the pointed place where accused persons started firing upon the police. In retaliation, the police party also made counter firing. Resultantly, four accused persons injured and fell down who were apprehended by the police who disclosed their names as Inayat ur Rehman, Wahid Ullah, Hazrat Ali and Sabir while their absconding accused namely Adnan, Shabbirullah (present applicant), Ahmed Ali and Ali managed their escape good. Thereafter, the injured accused were brought to hospital and the instant FIR was registered.

3. Heard the learned counsel for the parties and learned Additional Prosecutor General and with their assistance perused the record.

4. The applicant seeks post-arrest bail in a case where his name does not appear in either of the FIRs. The record reflects that the applicant was arrested solely on the basis of a statement made by a co-accused during interrogation. No identification parade has been conducted to establish the applicant's involvement in the commission of the alleged offence. It is a settled principle of law that where the accused is not named in the FIR and the case pertains to unknown persons, the holding of a test identification parade is mandatory. In the absence of such a procedure, the evidentiary value of the prosecution's claim is significantly diminished.

5. In similar circumstances, the Honourable Supreme Court of Pakistan in ***"Qamar alias Mitho v. The State and others"*** (PLD 2012 Supreme Court 222), has granted bail, wherein it was held as under:

> "3. It is not denied that the petitioner had not been nominated in the F.I.R. in any capacity whatsoever and his name had surfaced in this case for the first time after more than one month of the alleged occurrence when two persons namely Rehmat Ali and Muhammad Ashraf had nominated him as the unknown culprit who had accompanied the nominated culprits at the place of occurrence. It is admitted at all hands that both the above mentioned persons were not mentioned in the F.I.R. as eyewitnesses of the alleged incident. After such nomination of the petitioner it was necessary that a test identification parade ought to have been held so that the eye-witnesses mentioned in the F.I.R. could identify the petitioner as the culprit who had been mentioned in the F.I.R. as an unknown culprit but unfortunately that was never done. No specific or particular injury to any person had been attributed in the F.I.R. to the person who had been described therein as unknown culprit. Apparently the petitioner has no connection with the

> motive set up in the F.I.R. We have found it to be intriguing that those culprits who had specifically been nominated in the F.I.R. and had been attributed firing at the deceased have already been admitted to post-arrest bail but the petitioner who had never been nominated in the F.I.R. and whose implication in this case had come about through a backdoor has been refused the same relief. In these peculiar circumstances we have found that the case against the petitioner calls for further inquiry into his guilt."

6. Similarly, the Hon'ble Supreme Court of Pakistan in the case ***"State through Advocate-General, Sindh, Karachi versus FARMAN HUSSAIN and others"*** **(PLD 1995 SC 1)**, held:

> "If witness gets a momentary glimpse of accused and claims that he would be able to identify him, then after arrest, identification test becomes very essential which is to be conducted strictly according to guidelines and legal requirements enunciated by law".

7. We have noticed that the prosecution has failed to recover any mobile phone from the possession of the applicant that could establish a nexus with the alleged ransom transaction. The mere absence of such recovery significantly weakens the prosecution's case. Even otherwise, the law has evolved to the extent that mere recovery of a mobile phone, without supporting evidence such as transcripts of alleged calls, end-to-end audio recordings, forensic analysis of the device, or corroborative Call Detail Records (CDRs), is insufficient to establish culpability. In the absence of such technical and forensic substantiation, the evidentiary value of the alleged communication remains doubtful. In ***"Mian Khalid Pervaiz*** *vs.* ***The State through Special Prosecutor ANF and another",***

(2021 SCMR 522), the Supreme Court of Pakistan has highlighted on this issue and held:

> "Mere production of CDR DATA without transcripts of the calls or end to end audio recording cannot be considered/used as evidence worth reliance. Besides the call transcripts, it should also be established on the record that callers on both the ends were the same persons whose calls data is being used in evidence."

8. The argument advanced by the learned Additional Prosecutor General—that the recovery of ransom and the spontaneous arrest of the co-accused, coupled with the disclosure of the applicant's name during interrogation, disentitles the applicant from bail—does not appear to be legally sustainable. It is a well-established principle of law that the primary purpose of a statement made by an accused is not to implicate others, but rather to confront or contradict the maker during trial or to use such statement for corroboration. The Investigating Officer is duty-bound to conduct an independent and impartial investigation to ascertain the truth and collect credible evidence, rather than relying solely on the statement of a co-accused, who may have motives to mislead or falsely implicate others. Moreover, it is a settled principle of criminal jurisprudence that evidence recorded in one case cannot be read into another case, unless expressly permitted by law. Each case must be adjudicated on the strength of its own evidence and merits. Reference may be made to ***"Natho v. The State" (PLD 1986 SC 146), "Akbar Ali v. Qazi Javed Ahmad and others" (1986 SCMR 2018), "Ali Sher v. The State" (PLD 1987 Kar. 507), "Umer Hayat v. Additional Sessions JudgeIII, Khushab and 2 others" (2008 P***

Cr. L J 523) and "Malik Aman v. Haji Muhammad Tufail" (PLD 1976 Lah. 1446).

9. The provisions of Articles 140, 151 and 153 of Qanun-e-Shahadat Order, 1984 clearly indicates that there are two purposes for which a previous statement of a witness can be used. One is for confrontation or contradiction and the other is for corroboration. The present case lacking the link of the Principal Accused with the Applicants either for the commission of spontaneous recovery or in relation to demand of ransom as no effective recovery of mobile phone was successfully made during investigation. Consequently, the Applicant case falls in limb of "further inquiry".

10. These are the reasons of our short Order dated 23.06.2025.

11. Needless to mention that any observation recorded is for the tentative assessment only in order to decide bail application and the trial Court shall not interfere by it and shall decide the matter on merits after recording evidence.

JUDGE

JUDGE

Kamran/PS