

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Applications No. 639 and 706 of 2025

Before:

Justice Zafar Ahmed Rajput- ACJ
Justice Tasneem Sultana-J.

Applicants : Qazi Anees-ur-Rehman and Shahriyar @Sherry through Mr.Abdul Khursheed Khan, Advocate.

Respondent : The State, through Mr. Abbas Ali Khichi, Addl. P.G and Mr. Rana Khaid Hussain Special Prosecutor General Rangers.

Date of Hearing : 03.11.2025.

Date of order : 13.11.2025.

ORDER.

TASNEEM SULTANA J: By this common order, we intend to dispose of the above-listed both Criminal Bail Applications, as the same being arisen out of same Crime/FIR bearing No. 368 of 2018, registered under Sections 302, 324, 109, 111, 112, 114, 34, PPC read with Section 7 of the Anti-Terrorism Act, 1997 ("Act") at Police Station Rizvia Society, Karachi Central have been heard by us together.

2. Having been rejected their earlier applications for grant of post arrest bail in Special Case No.104 of 2019 by the Anti-Terrorism Court-XII, Karachi (Trial Court), vide order dated 25.02.2025, applicant Qazi Anees-ur-Rehman, through Criminal Bail Application No.639 of 2025, and applicant Shahryar @ Sheri, through Criminal Bail Application No.706 of 2025, seek the same concession.

3. Brief facts of the prosecution case are that on 25.12.2018, complainant Syed Fahad Hussain lodged the aforesaid FIR, alleging therein that on 23.12.2018 at about 22:30 hours, workers/officials namely Muhammad Azhar alias Sania s/o Rahmatullah, Muhammad Naeem s/o Muhammad Ramzan, Syed Fahad Hussain s/o Syed Akhtar Hussain, Syed Yasir Hussain s/o Azmat Hussain, and Muhammad Kamran were sitting in the Town Office of Pak Sar

Zameen Party, Nazimabad No.1, Karachi, when six unknown armed persons riding on three motorcycles arrived. Out of them, three entered the office and opened indiscriminate fire; as a result, Muhammad Azhar alias Sania having received firearm injuries died at the spot and Muhammad Naeem succumbed to injuries in Abbasi Shaheed Hospital. Complainant himself as well as Yasir Hussain being critically injured were admitted to the hospital. He claimed the attack was carried out by armed activists of MQM-London Group on the instigation of Nadeem Ahsan, Faizan Yousuf, Qasim Ali Raza and Tarawish. Then the FIR was lodged to the above effect.

4. Learned counsel for the applicants contended that the applicants are innocent and have been implicated on account of political enmity; their names do not appear in the FIR which was registered against unknown persons; no incriminating article has been recovered from them; the alleged recoveries in connected cases are foisted through police mashirs contrary to Section 103, Cr.P.C.; the confessional statements of co-accused recorded under Section 164, Cr.P.C. cannot be used against them as substantive evidence in view of Article 43 of the Qanun-e-Shahadat Order, 1984; and there exists no direct or circumstantial evidence connecting them with the occurrence; in the identification parade, all three eyewitnesses of the occurrence only stated that accused Qazi Anees-ur-Rehman was present at the gate and was holding pistol in his hand, thus it has stood proved he did not make any fire upon deceased or injured; hence, he urged that prosecution case against applicants falls within the ambit of further inquiry under Section 497(2), Cr.P.C.

5. Conversely, learned Addl. P.G and Special Prosecutor Rangers opposed the applications and submitted that both applicants are active members of MQM-London's militant wing; sufficient material has been collected during investigation connecting them with the occurrence; confessional statements of co-accused Rehman @ Shahrukh and Mohsin @ Shah recorded under Section 164, Cr.P.C. are voluntary, consistent, and inculpatory in nature, directly naming the present applicants; the forensic and circumstantial evidence corroborates those statements; and the nature of the offence falling within Section 7 of the Act and 302 PPC clearly brings the case within the prohibitory clause.

6. Heard. Record perused.

7. From a tentative assessment of the material collected during investigation, it appears that both applicants were arrested in Crimes No.51/2019 and 55/2019 under Sections 4 and 5 of the Explosives Substance Act, 1908 and Crimes No.57/2019 and 61/2019 under Section 23(1)(a) of the Sindh Arms Act, 2013 all registered at Police Station Gadap, Karachi, wherein recovery of 9mm pistols and ammunition was shown. Thereafter, they were formally shown arrested in the present case. However, it is informed that applicants have already been granted bail in certain cases referred to hereinabove.

8. Although the name of applicants do not transpire in the FIR but they were implicated on the basis of confessional statement of co-accused followed by their identification parade. However, inadmissibility of confessional statements to be seen while considering the material available on record.

9. As far as case of applicant Shaheryar @Sherry is concerned, during investigation, a test identification parade was conducted in which PWs Syed Fahad Hussain, Syed Yasir Hussain and Muhammad Kamran identified applicant Shaheryar @Sherry being present at the time of occurrence and further claims that he was one of accused who fired upon them. While the same set of witnesses during identification parade in respect of applicant Qazi Anees-ur-Rehman, they only stated that he was only present at the gate holding pistol in his hand. The statements of co-accused recorded under Section 164, Cr.P.C. also make direct reference to the names of both applicants. Although such statements are not substantive evidence within the contemplation of Article 43 of the Qanun-e-Shahadat Order, they may, at this stage, be considered for limited corroborative purposes when examined along with the other material collected during investigation.

10. The forensic and ballistic reports indicate that empties recovered from the scene of occurrence matched with the weapons seized during the same series of investigative operations. The circumstantial material collected so far, when taken into consideration together with the statements of the injured witnesses, prima facie supports the prosecution case and cannot be overlooked at this stage as far as case of applicant Shaheryar @Sherry is concerned as sufficient material is available on record to connect him with the commission of crime. Since applicant Qazi Anees-ur-Rehman is only stated to be present at the gate holding pistol and

even no aerial firing is alleged against him in the FIR, therefore, such ballistic reports are of no use against the applicant Qazi Anees-ur-Rehman. At the most, prosecution case against him is of collective liability in the commission of crime, which could only be determined at the trial.

11. For what has been discussed above, considering the nature of the accusation, the available material, and the tentative satisfaction of the investigation, the applicant Shaheryar @Sherry has failed to make out case for concession of bail. However, the case of applicant Qazi Anees-ur-Reham falls within the ambit of further inquiry as contemplated under Section 497(2), Cr.P.C.

12. For the foregoing tentative reasons, bail plea of applicant Shaheryar @ Sherry is dismissed. Applicant Qazi Anees-ur-Rehman is granted post arrest bail subject to furnishing solvent surety in the sum of Rs.500,000/= and P.R bond in the like amount to the satisfaction of Trial Court.

13. The observations made herein are tentative in nature and shall not prejudice the case of either party at trial.

JUDGE

ACTING CHIEF JUSTICE