

PRESENTED ON
04.11.2024

Deputy Registrar

IN THE HIGH COURT OF SINDH, KARACHI

Bail Application No. 62565 /2024

Muhammad Umair
S/o Muhammad Mithal
Muslim, adult, R/o House No.G-2,
MES SRE, Majeed Karsaz, Karachi
Now confined in Central Prison,
Karachi

APPLICANT/ACCUSED

VERSUS

The State

RESPONDENT

FIR No. 1012/2023
U/S: 385, 386, 34 PPC
R/W Section 7ATA,
P.S Shahrah-e-Faisal,
District East, Karachi

BAIL APPLICATION U/S 497 CRIMINAL PROCEDURE CODE, 1898,
R/W SECTION 21-D, ANTI-TERRORISM COURT ACT, 1997

It is most respectfully prayed on behalf of the above named applicant/accused Muhammad Umair S/o Muhammad Mithal, that his Hon'ble Court may kindly be pleased to grant him bail in FIR No. 1012/2023, U/S 385, 386, 34 PPC, R/W Section 7ATA, P.S Shahrah-e-Faisal, District East, Karachi on the following facts and grounds:-

FACTS

The brief facts of the prosecution case are that on 07-11-2023, complainant Mushtaque Ahmed Qureshi S/o Naseer Ahmed Qureshi, R/O House No.228, Zigri Goth, Block-II, Gulistan-e-Auhar, District East, Karachi lodged FIR No.1012/2023, U/s 385, 386, 34 PPC, R/W Section 7ATA, P.S Shahrah-e-Faisal, District East, Karachi and stated therein that SIP Sadruddin Merani being duty officer performing his duty and he recorded statement of the complainant U/S 154 Cr.P.C, which is as under, the complainant is resident of above said address along with his family and retired petty officer from PAK NAVY, he purchased above said house comprising one room in 2006, which was completed slowly by the



IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Salahuddin Panhwar
Mr. Justice Jan Ali Junejo

Cr. Bail Application No. 2565 of 2024

[Muhammad Umair *versus* The State]

Applicant : Through Mr. Nasrullah Malik, Advocate
State : Through Mr. Ali Haider Saleem,
Additional Prosecutor General
Complainant : Through Ali Akhtar, Advocate
Date of Hearing : 06.02.2025
Date of Decision : 06.02.2025

ORDER

JAN ALI JUNEJO, J:- Applicant, Muhammad Umair son of Muhammad Mithal is seeking bail after arrest in Crime No.1012 of 2023 registered with PS Shahra-e-Faisal, Karachi East under Section 385, 386, 34 PPC read with Section 7 Anti-Terrorism Act, 1997. His bail application was dismissed by the learned Special Judge, Anti-Terrorism Court No.XIII, Karachi vide order dated 17.10.2024, hence the instant bail application.

2. Precisely, allegation against the applicant/accused is that private complainant has stated that the other accused alongwith present applicant came to his house duly armed with deadly weapons and required the complainant to vacate the house otherwise pay extortion (Bhatta) of Rs.5/10 lac. and also extended threats that in case of failure to pay the extortion money, they will kill his sons and went back accordingly.



3. It is *inter alia* contended by the learned counsel for the applicant that the applicant is serving in Military Engineer Services Commander MES (Navy) JNB Ormara and performing his duty as a shutting of the water well in Pak navy at the Civilian's side. He further contended that admittedly there is a civil dispute of plot, but complainant converted the same into criminal proceedings. He submitted that all the alleged accused are relatives to each other and both parties are residing in same area. He also pointed out that no specific role has been attributed to the applicant and there is no recovery from his possession.


4. On the other hand learned Additional Prosecutor General alongwith complainant fully opposed the grant of bail. He contended that present applicant is mentioned in the FIR with the particular allegation that he alongwith his companions demanded *Bhatta* of Rs.500,000/Rs.1,000,000/- from the complainant by issuing threats for dire consequences, if the Complainant would not pay extortion money (*Bhatta*), he would be killed, which created panic, terror and sense of insecurity in the minds of complainant party and general people of the society.

5. We have heard the learned counsel for the applicant, the complainant in person, and the learned Additional Prosecutor General, and have meticulously examined the material available on record with the utmost care and caution.

6. During arguments, the complainant admitted to a dispute regarding the vacation of a property. This suggests that the matter between the parties is of a civil nature. Furthermore, the record indicates that no specific amount of the alleged extortion money ("*Bhatta*") demanded by the accused is mentioned in the FIR. The complainant has vaguely stated an amount of Rs. 5-10 lakhs, which



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raises serious doubts about the veracity of the extortion claim. The complainant alleges that all the accused were armed; however, it is rather peculiar that, despite being armed, none of them used their weapons—there was not even an instance of ineffective firing. Additionally, the complainant has not attributed any specific role or overt act to the applicant, apart from making general allegations. Neither has the complainant offered the alleged extortion money, nor has the applicant received it. It is also difficult to believe that the complainant and the applicant, who reside in the same locality (Mohallah), would have had such a direct confrontation over extortion. Despite their close proximity, the complainant lodged the FIR after an inordinate delay, without providing a plausible explanation, which further casts doubt on the prosecution's case. Additionally, the complainant has failed to specify the exact type of weapon allegedly carried by the accused. A plain reading of Section 385 of the Pakistan Penal Code (PPC) establishes that, to prove an offence under this provision, the prosecution must demonstrate the following:

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- (a) The accused either put the victim in fear or attempted to do so;
 - (b) This fear or attempt to instill fear resulted in injuries as defined under Section 44 of the PPC;
 - (c) The accused committed acts (a) and (b) with the intent to extort, as described in Section 383 of the PPC.

To warrant a conviction under Sections 385 & 386 of the Pakistan Penal Code (PPC), the prosecution must prove that the act of extortion, as defined in Section 383 of the PPC, was committed. In the present case, this Court is of the considered opinion that the allegations under Sections 385 and 386 of the PPC, even if accepted at face value, do not prima facie constitute the alleged offences. These allegations require thorough examination by the trial Court during the trial. Given these circumstances, this case warrants further inquiry within the meaning of Section 497(2) of the Code of Criminal Procedure, 1898. Moreover, no

recovery has been made from the possession of the applicant, who is admittedly a government employee. Hence, there is no apparent likelihood of his absconding or tampering with the prosecution's evidence. As previously determined by the trial court, the applicant's physical custody is no longer required for investigative purposes, as the challan has already been submitted. 13

7. It is a well-established legal principle that when reasonable doubt arises regarding an accused person's involvement in the crime or the truthfulness of the prosecution's case, the accused cannot be deprived of the benefit of bail. Reliance is placed on the authoritative precedent set by the Apex Court in *Abdul Rasheed v. The State* (2023 SCMR 1948). Furthermore, abscondance alone cannot be considered conclusive proof of guilt, nor can it serve as the sole basis for denying the relief sought.

8. In the case of *Muhammad Aslam v. The State & Others* (2016 SCMR 1520), the Apex Court held that a person who absconds after an occurrence and is declared a proclaimed offender may forfeit the right to judicial discretion in their favor on the grounds of propriety. However, it is equally true that an accused person involved in a case requiring further inquiry into their guilt is entitled to bail as a matter of right. Whenever a question of propriety conflicts with a question of right, the latter must prevail.

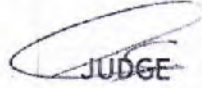
9. In light of the above legal position, we find that the applicant has successfully established a strong prima facie case for "further inquiry" as envisaged under Section 497 Cr.P.C. Accordingly, this Criminal Bail Application was allowed via our short order dated 06.02.2025, granting the appellant post-arrest bail in the sum of Rs. 50,000/- to the satisfaction of the trial court.



10. It is pertinent to mention that the observations made herein are tentative and shall have no bearing whatsoever on the merits of the case.

11. These are the reasons for our short order dated 06.02.2025.

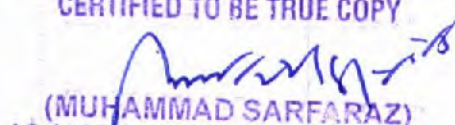

JUDGE


JUDGE

Dated: 10.02.2025
B-K Soomro



THE HIGH COURT OF SINDH, KARACHI
CERTIFIED TO BE TRUE COPY


(MUHAMMAD SARFARAZ)
I.C. / ASSISTANT REGISTRAR (COPYING)

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