

THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1446 of 2025

Applicant : Musawer Ahmed son of Israr Ahmed through M/s. Raj Ali Wahid Kunwar, Mian Rafiu Ahmed Tunio and Pia Ali, Advocates

Complainant : Mst. Nasreen Bano wife of Ferozuddin Abbasi through Mr. Jibran Nasir, Advocate

The State : Through Ms. Seema Zaidi, Additional Prosecutor General, Sindh

Date of hearing : 12.01.2026

Date of decision : 12.01.2026

ORDER

Jan Ali Junejo, J.- The Applicant seeks pre-arrest bail in FIR No. 555/2024, P.S. Darakhshan, initially investigated under Section 319/34 PPC and later cognized by the learned Judicial Magistrate under Sections 302/34 PPC read with Sections 9 and 16 of the CNS Act, 1997. The learned Additional Sessions Judge-VIII, Karachi South, vide orders dated 07.11.2024 in BBA No. 3332/2024 and 26.05.2025 in BBA No. 1344/2025, declined pre-arrest bail. The Applicant was granted ad-interim bail vide Order dated: 02-06-2025 by this Court.

2. The complainant, Mst. Nasreen Bano, through proceedings under Sections 22-A & 22-B Cr.P.C., procured registration of the FIR on 30.09.2024 alleging that her son, Zain Abbasi, frequented "Bad Egg" Restaurant (Plot No. 41-C, Phase VI, DHA, Karachi), owned by the Applicant, with whom a business/partnership was under negotiation. On 31.07.2024, Zain remained at the restaurant between about 1700–2100 hours, consumed food/coffee, returned home unwell, vomited, and was taken to South City Hospital where he was declared dead. A post-mortem was conducted on 02.08.2024 at JPMC. Toxicology detected constituents of caffeine, nicotine, methamphetamine and cannabis; the medico-legal opinion records cardio-pulmonary arrest secondary to chronic ischemic heart disease; no sedatives, psychotic, narcotic poisons were detected. The I.O. submitted an interim challan on 21.10.2024 and a final challan on

01.12.2024 under Section 319/34 PPC. Subsequently, upon a prosecution scrutiny note, the learned Magistrate took cognizance on 21.03.2025 by deleting Section 319 PPC and inserting Sections 302/34 PPC read with Sections 9 & 16 of CNSA, 1997. The Applicant, who had earlier obtained protective and interim pre-arrest bail, faced recall of interim bail by the learned Additional Sessions Judge vide Order dated 26.05.2025; hence the present proceedings.

3. Learned counsel for the Applicant contends that the FIR is the product of mala fides and afterthought, lodged following an admitted deliberation and after post-mortem with a delay; that the deceased and Applicant were friends engaged in prospective partnership, and the Applicant even advanced Rs. 500,000/- to the deceased on the day in question, negating motive. It is pressed that the medical and chemical analyses do not detect any poison; methamphetamine and cannabis, even if present, are stimulants/non-lethal in ordinary parlance and their unspecified quantities bear no nexus to homicidal administration. No recovery of narcotics/poisons from the restaurant, no eye-witness account, and no independent staff/walk-in witness has been cited; the case rests on suspicion and circumstantial inferences alone. CCTV was sought after over two months and the DVR, per ordinary overwriting cycle, had auto-deleted footage; there is thus no proven tampering. The I.O.'s final report under Section 173 Cr.P.C. opined Section 319/34 PPC; the Magistrate exceeded jurisdiction by inserting Section 302/34 PPC and Sections 9 & 16 CNSA at cognizance stage, contrary to settled law that a Magistrate may agree or disagree but cannot assume investigative powers to alter/add graver sections. Reliance is placed, *inter alia*, on PLD 2021 SC 708 and 2022 SCMR 1424 regarding the scope of pre-arrest bail and protection of liberty in absence of incriminating material, and on authorities limiting a Magistrate's power at the challan stage. It is urged that the matter is one of further inquiry under Section 497(2) Cr.P.C.; the Applicant has cooperated, is not a flight risk, and undertakes to face trial. Prayer is for confirmation of interim pre-arrest bail.

4. Conversely, learned APG, assisted by learned counsel for the complainant, opposes bail, submitting that the deceased consumed a beverage at the Applicant's restaurant shortly before his deterioration and death; toxicology confirms presence of cannabis, methamphetamine, caffeine, nicotine, and the chain of circumstances *prima facie* connects the Applicant. It is argued that CCTV was managed/removed and staff/co-accused concealed, constituting post-occurrence conduct indicative of guilt; CDR shows a late-night call by the Applicant to the deceased,

reflecting his involvement around the material time. It is further argued that the delay in FIR is explained by medico-legal requirements and recourse to Section 22-A Cr.P.C. Given the heinous nature of the offence (Section 302 PPC) and insertion of CNSA offences, it is urged that deeper appreciation is impermissible at bail stage and the plea of further inquiry is untenable in presence of medical/scientific support and witness statements. Prayer is for dismissal of the bail application.

5. I have considered the arguments advanced by the learned counsel for the Applicant, the learned counsel for the Complainant, and the learned A.P.G. for the State, and have also made a tentative assessment of the material on record, as is permissible at the bail stage. Pre-arrest bail is an extraordinary relief, intended to act as a safeguard against arbitrary arrest and abuse of the process of law; however, where mala fides, ulterior motives, or absence of sufficient grounds for arrest are *prima facie* evident, such protection may be extended. The Honourable Supreme Court has clarified that, while considering pre-arrest bail, the courts may touch upon the merits of the case to the extent necessary, while ensuring the fundamental rights to liberty and fair trial guaranteed under Article 10-A of the Constitution. The Applicant is required to demonstrate, *inter alia*, that (a) the case calls for further inquiry, (b) the arrest is sought for ulterior motives or without genuine investigative necessity, and (c) he has cooperated with the investigation. Upon tentative assessment, it appears that the prosecution case rests primarily on circumstantial evidence. No direct evidence of administration of any poisonous/intoxicating substance by the Applicant or his staff is available on record. No recovery of any poison/narcotic/contraband has been effected from the restaurant premises or from the Applicant. The medical record indicates the cause of death as cardio-pulmonary arrest secondary to chronic ischemic heart disease. The presence of caffeine, nicotine, methamphetamine and cannabis is recorded, but the toxicology reports, as placed, do not quantify the substances nor opine homicidal administration; importantly, they note "no traces of sedative, psychotic, narcotic or poisonous substances" in designated samples. In the present posture, the medical evidence does not conclusively support a charge under Section 302 PPC premised on poisoning.

6. The prosecution's reliance on "overdose" as a basis for homicide is, at this stage, inferential and not corroborated by recovery, eye-witness testimony, or expert opinion attributing administration to the Applicant/restaurant staff. The chain-of-circumstance gaps, absence of independent patrons/staff as witnesses, absence of sample collection from

utensils/coffee machine at the time, and absence of quantified toxicological opinion, tilt the matter toward further inquiry.

7. The FIR was registered after recourse to Section 22-A Cr.P.C. and after post-mortem; such delay is not *per se* fatal. However, when the entire case pivots on circumstantial links, delay coupled with improvements in Section 161 Cr.P.C. statements may be viewed with caution for bail purposes. As to alleged CCTV tampering, the record shows police requisitioned DVR after more than two months; the explanation of auto-overwrite within 15 days is plausible at this stage, and absent forensics demonstrating deletion/alteration, a definitive adverse inference cannot be drawn now.

8. The I.O. submitted a final report under Section 173 Cr.P.C. recommending Section 319/34 PPC. The learned Magistrate, at the stage of cognizance, deleted Section 319 and inserted Sections 302/34 PPC and Sections 9 & 16 CNSA. This jurisdictional objection, even if ultimately resolved at trial or in appropriate proceedings, lends weight to the plea of further inquiry for purposes of pre-arrest bail. The record indicates a friendly and prospective business relationship between the deceased and the Applicant, including an alleged advancement of Rs. 500,000/- on the same day. At bail stage, this substantially weakens a prosecution motive of homicidal poisoning by the Applicant, absent cogent counter-material.

9. In view of (a) absence of direct evidence of administration, (b) lack of recovery, (c) medical cause referring to chronic ischemic heart disease with unquantified stimulant/cannabinoid presence and no poison detected, (d) circumstantial nature of the case with gaps, and (e) the jurisdictional controversy around the insertion of graver sections, the matter squarely falls within the ambit of "further inquiry" under Section 497(2) Cr.P.C. The Applicant has remained available to the process, earlier obtained protective/interim bail, and there is no material of absconcion or non-cooperation. No specific investigative step requiring custodial arrest has been demonstrated. The object of arrest is not to punish pre-trial. Moreover, no recovery of narcotic substance has been effected from the Applicant or the premises, nor has any contraband sample from the served beverage been forensically connected to the Applicant. In these circumstances, *prima facie* applicability of Sections 9 and 16 of the CNSA to the Applicant is doubtful for bail purposes and reinforces further inquiry.

10. For the foregoing reasons, without commenting upon the merits of the case at trial and strictly for the purposes of this bail application, the Applicant has made out a case for confirmation of pre-arrest bail on the

touchstone of further inquiry under Section 497(2) Cr.P.C., absence of demonstrated necessity for custodial arrest, and to prevent potential abuse of process. Consequently, the present Criminal Bail Application is allowed. Interim pre-arrest bail earlier granted to the Applicant, Musawer Ahmed son of Israr Ahmed, is hereby confirmed on the same terms and conditions. The observations made herein are tentative in nature and are confined solely to the determination of the bail application. The learned Trial Court shall not be influenced by these observations and shall decide the case strictly in accordance with law on the basis of evidence produced before it. These constitute the detailed reasons for the short order dated 12.01.2026.

JUDGE

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