

THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2883 of 2025

Applicant : Mst. Rehan Tariq wife of Tariq through Mr. Muhammad Rafiq Brohi, Advocate

Complainant : Muhammad Daniyal son of Muhammad Arshad through Mr. Shaikh Abdul Salam, Advocate

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

Date of hearing : 04.12.2025

Date of decision : 04.12.2025

O R D E R

Jan Ali Junejo, J.- This order shall decide the post-arrest Criminal Bail Application filed by the Applicant/Accused Mst. Rehana Tariq under Section 497, Cr.P.C., arising out of FIR No. 1192 of 2025 registered at P.S. Surjani Town, Karachi, for offences under Sections 302/34, PPC. The Applicant seeks bail after arrest, being aggrieved by the order dated 08.10.2025 passed by the learned Xth Additional Sessions Judge, Karachi West, whereby her earlier bail plea (B.A. No. 5120/2025) was declined.

2. As per the contents of the FIR lodged by the complainant Muhammad Daniyal on 11.09.2025 at 12:35 a.m., the occurrence is alleged to have taken place in the intervening night of 09.09.2025 at about 02:30 a.m. at House No. 557, Khuda Ki Basti, Phase-I, Surjani Town. It is alleged that the complainant was beaten by certain accused including the Applicant, while during the altercation co-accused Arif (son of the Applicant) allegedly fired upon the complainant's wife Sundas, causing her death. The complainant attributes a collective assault to several nominated accused, including the Applicant, and assigns the specific act of firing to co-accused Arif. Post-mortem opines death due to firearm injury to head resulting in irreversible neurogenic and haemorrhagic shock, leading to cardiorespiratory arrest. The Applicant is a woman, stated to be an old lady, and has remained in judicial custody.

3. Learned counsel for the Applicant, Mr. Muhammad Rafiq Brohi, contends that the Applicant is innocent and has been falsely implicated due to inter se family discord. He submits that (i) there is an unexplained delay of two days in the lodgment of the FIR, which casts doubt upon the veracity of the prosecution version; (ii) the incident occurred at odd hours of night and the FIR discloses no source of light or conditions enabling positive identification; (iii) no specific overt act or weapon is attributed to the Applicant in the FIR—her nomination is on the basis of relatedness as mother of the alleged principal culprit and general allegations of a scuffle; (iv) no eye-witness other than the complainant has been mentioned; (v) the Applicant is a woman of advanced age, a first offender, suffering from indisposition, not required for further investigation, and incarceration at this stage would be oppressive; and (vi) the case, on tentative assessment, calls for further inquiry within the ambit of the proviso to Section 497(2), Cr.P.C. He prays that the Applicant be admitted to bail pending trial.

4. Conversely, learned Additional Prosecutor General, Ms. Seema Zaidi, duly assisted by learned counsel for the complainant, Mr. Shaikh Abdul Salam, opposes the application and submits that the Applicant is duly nominated in the FIR and has been assigned active participation in the occurrence. It is urged that: (i) the offence is heinous and falls within the prohibitory clause of Section 497, Cr.P.C.; (ii) the Applicant's presence at the scene and participation in beating the complainant, followed by the fatal shot by co-accused Arif, *prima facie* reflects common intention under Section 34, PPC; (iii) no *mala fides* or *ulterior motive* is shown to falsely implicate the Applicant; and (iv) at bail stage, deeper appreciation of evidence is not permissible and the material on record connects the Applicant to the occurrence. It is further contended that presence and positive participation suffice to decline bail. Learned APG, therefore, prays for dismissal of the application.

5. I have heard learned counsel for the parties and perused the available record. The governing principles at bail stage are settled: only a tentative assessment is to be undertaken without entering into a meticulous evaluation of the evidence. The presumption of innocence remains foundational and the benefit of further inquiry must go to the accused where the material raises reasonable doubts as to her nexus or

specific role, particularly in cases resting on vicarious liability under Section 34, PPC. The FIR attributes the fatal firearm injury specifically to co-accused Arif. As regards the present Applicant, the allegations are of general participation in beating the complainant preceding the shooting. No weapon is attributed to the Applicant; no instigation, facilitation, or pre-concert is alleged beyond a broad assertion that "*all said persons jointly beaten me*", followed by the solitary shot by Arif at the deceased. While common intention can indeed be formed at the spur of the moment and inferred from the conduct before, during, and after the occurrence, the prosecution at bail stage must at least demonstrate some proximate material linking the Applicant's actus reus or mens rea to the homicidal act beyond her mere presence and generalized allegation of scuffle.

6. In the present record, the following features, taken cumulatively, create room for further inquiry within the meaning of Section 497(2), Cr.P.C.: Delay of approximately two days in lodging the FIR. The explanation offered in the FIR cites stress and funeral rites. While such reasons are not unheard of, the delay remains a factor that can affect the spontaneity and may invite careful scrutiny at trial. At the bail stage, it weighs in favour of further inquiry. The incident is alleged at 02:30 a.m. with no mention of a source of light or other conditions facilitating reliable identification of all actors and their precise roles, especially where multiple persons are nominated and three remain unknown. The specific, lethal act is attributed solely to co-accused Arif. Against the Applicant, no firearm, deadly weapon, or specific overt act is articulated. The omnibus attribution of "jointly beaten" the complainant, not the deceased, prior to the firing, does not, without more, unequivocally establish sharing of common intention to commit murder of the deceased. The parties are closely related; admitted family strain regarding domestic issues is pleaded. While relationship *per se* does not vitiate prosecution, it may be a relevant circumstance when considered with the delayed reporting and generalized role. The Applicant is a woman, stated to be elderly, with no criminal antecedents; she has remained in custody and is no more required for investigation. The statutory benevolence towards women enshrined in the provisos to Section 497, Cr.P.C., though not absolute in prohibitory clause matters, has repeatedly been recognized as a significant consideration where the case otherwise borders on further inquiry and the accused is not shown to be a flight risk or likely to tamper with evidence. It is a settled principle of criminal jurisprudence that the mere presence of an accused at the scene of occurrence, or association with the principal offender, does not by itself establish common intention unless there is cogent material showing active participation or a prior meeting of minds. Reliance in this

regard is placed on the case of **Bashir Ahmed and others v. The State and another (2022 SCMR 1187)**, wherein the Honourable Supreme Court of Pakistan was pleased to hold that: *“Mere presence of an accused with an accused who commits the crime would not constitute his common intention unless there is an evidence referring to the criminal act of that accused committed in furtherance of common intention with the other accused”*.

7. Considering the facts and circumstances of the case, and being guided by the settled principle that where two views are possible at the bail stage, the one favourable to liberty should be preferred, I am persuaded that the accusation against the Applicant, as it presently stands, calls for further inquiry. There is no allegation that the Applicant has attempted to abscond, influence witnesses, or hamper the course of investigation, and any residual apprehension in this regard can adequately be addressed through the imposition of appropriate conditions.

8. For the foregoing reasons, this Criminal Bail Application is allowed. The Applicant, Mst. Rehana Tariq W/o. Tariq, is admitted to bail pending trial in case FIR No. 1192 of 2025 under Sections 302/34, PPC, registered at Police Station Surjani Town, Karachi, subject to her furnishing: solvent surety in the sum of Rs. 200,000/- (Rupees Two Hundred Thousand only), and a personal recognizance bond in the like amount, to the satisfaction of the learned trial Court. 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 04.12.2025.

JUDGE