

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi
Mr. Justice Aqeel Ahmed Abbasi

Criminal Petition No. 1425 of 2024

[Against the order dated 08.11.2024 passed by the High Court of Sindh, Bench
at Mirpurkhas in Cr1.Bail Application No.S-87 of 2024]

Ghazi Arab *...Petitioner(s)*

Versus

The State *...Respondent(s)*

For the Petitioner(s) : Mian Taj Muhammad Keerio, ASC

For the State : Mr. Siraj Ali Khan, Additional PG
Alloudin, S.I.

Complainant : Liaquat Ali, in-person

Date of Hearing : 22.07.2025

JUDGMENT

Syed Hasan Azhar Rizvi, J.- Through the present petition, the petitioner seeks leave to appeal against the order dated 08.11.2024 passed by the High Court of Sindh, Bench Mirpurkhas, whereby the post-arrest bail has been declined to him in FIR No.88 of 2024 registered under Sections 302 and 34 of the Pakistan Penal Code, 1860 (“PPC”) at the Police Station Umerkot City.

2. Brief facts leading to the instant case are that on the evening of 29.05.2023, the complainant received a phone call from his father (deceased), who reportedly informed him about a violent

altercation by Mst. Sharifan (co-accused and wife of deceased), Jalal Nohri (co-accused) and the present petitioner and expressed apprehension regarding threats to his life. The complainant, upon receiving this information, contacted his uncle Muhammad Khan Nohri and proceeded to his native village. On the following morning, i.e., 30.05.2023, the complainant, along with another relative namely Muhammad Rahim Nohri, found the deceased lying on a *charpai* within the premises of his house, having sustained multiple visible injuries and was found dead.

3. Thereafter, the matter was brought to the notice of relatives and the local police, who arrived at the scene, conducted initial legal formalities, and shifted the deceased's body to Civil Hospital Umerkot for post-mortem examination. Upon completion of medico-legal requirements, the body was handed over to the complainant for burial. During investigation, co-accused Mst. Sharifan was arrested on 31.05.2023. Her statement under Section 161, Cr.P.C. was recorded on the same day, wherein she allegedly admitted her role in the commission of the offence. Subsequently, her confessional statement under Section 164, Cr.P.C. was recorded before the learned Judicial Magistrate-II, Umerkot, in which she reiterated the same version and directly implicated herself and the present petitioner. Pursuant to the confessional statement, present petitioner was arrested on 02.06.2023.

4. Learned counsel for the petitioner contends that there is an unexplained delay of one day in lodging of the FIR; that the petitioner has been implicated solely on the basis of the confessional statement of a co-accused, which, according to him,

carries no independent evidentiary value in the absence of corroboration. It is further argued that co-accused Jalal Nohri has already been granted bail, and therefore, on the principle of consistency, the petitioner is also entitled to the same relief, hence prays that the impugned judgment may be set aside.

5. On the contrary, the learned Additional Prosecutor General, Sindh appearing on behalf of the State supports the impugned judgment and contends that the petitioner was specifically nominated in the FIR and has been implicated through the confessional statement recorded by the co-accused; that the crime weapon and a blood-stained piece of cloth allegedly used to strangle the deceased were recovered pursuant to information provided by the petitioner, which prima facie connects him to the commission of the offence; and that the alleged offence falls within the prohibitory clause of Section 497 Cr.P.C thus prays that the petition may be dismissed.

6. We have heard the arguments advanced by the learned counsel for the petitioner, the learned Law Officer for the State, and the complainant in person, and have perused the material available on the record with their able assistance.

7. Perusal of the available record reveals that incident occurred during the night between 29th and 30th May, 2023 at an unknown time and was reported to the police on 30.05.2024 at 2300 hours by Liaquat Ali/complainant (son of deceased Hakim Nohri). Although there is indeed a delay in the lodging of the FIR, the same stands duly explained through the contents of the FIR itself. The complainant has stated that he works as a driver in

Tando Muhammad Khan and, on the evening of 29.05.2023, he received a telephonic call from his father (now deceased), who informed him about an altercation involving the accused persons and asked complainant to return home. The complainant left for the village the same night and, upon arrival the following morning, discovered the dead body of his father. The delay in registration of the FIR has been attributed to the shifting of the dead body for the post-mortem examination, and the FIR was lodged after the burial had taken place. Mere delay, in such circumstances, does not cast any doubt on the occurrence of the incident, nor can it be treated as a ground for grant of bail when sufficient material exists on record which *prima facie* connects the petitioner/accused with the commission of the offence. Thus, this contention of the learned counsel for the petitioner having no merit is accordingly repelled.

8. The contention of the learned counsel for the petitioner that the petitioner is entitled to the concession of bail on the ground of consistency, as co-accused Jalal Nohri has already been granted bail, is misconceived. It is trite law that the rule of consistency is applicable only when one person's case is at par with the accused whose post-arrest bail has been granted. In the instant case, the role attributed to co-accused Jalal Nohri is clearly distinguishable from that assigned to the present petitioner. Furthermore, the nature and extent of the incriminating material collected against the petitioner is materially different from that gathered against co-accused Jalal Nohri. As such, the case of the petitioner is not at par with that of the co-accused.

9. The rule of consistency was explained by this court in the case of Muhammad Atif v. The State (2024 SCMR 1071) in the following words:

“7. The rule of consistency in bail matters is attracted and applied after the grant of bail to a co-accused. Grant of bail by a court considers several factors like the contents of the FIR, the incriminating material collected by the police during investigation, the past history of the accused, etc. The grounds which form the basis for the grant of bail to a co-accused is thus the benchmark for grant of bail to the accused under the rule of consistency. Therefore, the court has to assess whether the role of the accused in the FIR, examined in the background of the material collected by the Police is the same as that of the co-accused, who has been granted bail. It is this congruence in the case of the co-accused and the accused that attracts the rule of consistency.”

In light of the foregoing principles, and having found that the petitioner's role and the supporting material against him are not identical to those of co-accused Jalal Nohri, the rule of consistency is not attracted in the present case. Accordingly, this contention of the learned counsel for the petitioner fails.

10. As regards the contention of the learned counsel for the petitioner that the confessional statement of a co-accused has no evidentiary value against the petitioner, it is by now well settled that the evidentiary value of such a statement is to be determined by the learned trial Court at the appropriate stage. However, at the bail stage, a tentative assessment is permissible only if the confessional statement is corroborated by independent incriminating material available on record. In this regard, reliance may be placed on the judgment of this Court in Muhammad Sarfaraz Ansari v. The State and others (PLD 2021 SC 738), wherein it was observed as follows:

“The principle ingrained in Article 43 of the Qanun-e-Shahadat is applied at the bail stage and the confessional statement of an accused can lead the court to form a tentative view about prima facie involvement of his co-accused in the commission of the alleged offence; but as in

the trial, at the bail stage also, the prima facie involvement of the co-accused cannot be determined merely on the basis of confessional statement of other accused without any other independent incriminating material corroborating the confessional statement. Therefore, we have to examine whether there is any other tangible incriminating material available on the record that corroborates the confessional statement of the co-accused, by connecting the petitioner with the commission of the alleged offences.”

In the instant case, the petitioner has been specifically nominated in the FIR and is also implicated in the inculpatory confessional statement of the co-accused Mst. Sharifan with specific attribution of role. Furthermore, the recovery of the crime weapon and the blood-stained cloth allegedly used to strangle the deceased recovered on the pointation of the petitioner, constitutes independent incriminating material which, *prima facie*, corroborates the confessional statement and connects the petitioner with the commission of the alleged offence.

11. Moreover, the offence alleged against the petitioner is one under Section 302, P.P.C., which is punishable with death or imprisonment for life, and thus falls within the prohibitory clause of Section 497(1), Cr.P.C. It is a settled proposition of law that in cases falling within the prohibitory clause, the grant of post-arrest bail is restricted to the exceptions enumerated therein, namely: **(i)** under the first proviso to Section 497(1), Cr.P.C., where the accused is a woman, minor, or a sick or infirm person; **(ii)** under the third proviso to Section 497(1), Cr.P.C., where there is an unreasonable delay in the conclusion of the trial, not attributable to the accused; and **(iii)** under Section 497(2), Cr.P.C., where the case requires further inquiry into the guilt of the accused. However, upon tentative assessment of the available material, the petitioner’s case does not appear to qualify as one of further inquiry so as to bring it within the purview of Section 497(2),

Cr.P.C. Reliance in this respect is placed on the cases of Bakhti Rehman v. The State (2023 SCMR 1068) and Muhammad Atif v. The State (2024 SCMR 1071), wherein bail was declined in similar circumstances.

12. It is a settled proposition of law that where there appear reasonable grounds to believe that the accused has committed an offence punishable with death or imprisonment for life, the case falls within the prohibitory clause of Section 497, Cr.P.C. In the present case, the allegations against the petitioner attract such punishment; therefore, the bar under the said provision is attracted. Reliance is placed upon the cases of Sher Muhammad v. The State (2008 SCMR 1451) and Shoukat Ilahi v. Javed Iqbal and others (2010 SCMR 966).

13. This Court in the case of Shoukat Ilahi v. Javed Iqbal and others (2010 SCMR 966) has ruled as under:-

“6. We have given due consideration to the submissions made and have gone through the material available on record. From the record, we find that the name of the petitioner was mentioned in the F.I.R.; that the motive had been alleged against him; that a specific role of raising lalkara was assigned to him and that it was specifically mentioned that he and his co-accused fired at the deceased, which hit him. The P.Ws. have supported the case in their 161, Cr.P.C. statements which is further corroborated by the medical evidence, as according to the Medical Officer the deceased had six firearm entry injuries out of them two were exit wounds. Thus, prima facie incident has been committed by more than one person. From the material available on record, we are of the view that there are reasonable grounds for believing that the petitioner is involved in the case.”

14. At the bail stage, deeper scrutiny of material available on record is unwarranted, as that would affect the merits of the case at the trial. However, a tentative assessment of material available on record *prima facie* connects the petitioner with the commission of the offence which falls within the ambit of the prohibitory clause of section 497, Cr.P.C.

15. In view of above facts and circumstances, petitioner has failed to make out a case for the grant of bail. Impugned judgment of the High Court is well-reasoned, has considered all the factual and legal aspects, thus, needs no interference.

16. Consequently, this petition is dismissed and leave is refused.

17. It is reiterated that the observations made hereinabove are tentative in nature. The trial court is at liberty to independently adjudicate upon the case on its own merits without being influenced by the observations made hereinabove.

Judge

Judge

Karachi,
22 July, 2025
APPROVED FOR REPORTING
Paras Zafar, LC

Judge