

THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2789 of 2025

Applicants : Muhammad Zakaria son of
Muhammad Yousuf and Muhammad
Alam son of Muhammad Azam through
Mr. Aamir Mansoob Qureshi, Advocate

Complainant : Mufeez ur Rehman son of Ashraf Ali
through Ali Ahmed, Advocate

The State : Through Ms. Rahat Ehsan, Additional
Prosecutor General, Sindh

Date of hearing : 30.10.2025

Date of decision : 30.10.2025

ORDER

Jan Ali Junejo, J.- Through this order, I intend to dispose of the above captioned Criminal Bail Application filed under Sections 497/498-A Cr.P.C. by the Applicants/Accused Muhammad Zakaria and Muhammad Alam seeking their release on bail in FIR No. 461/2025 under Sections 302, 324, and 34 PPC, registered at Police Station Pakistan Bazar, Karachi.

2. Briefly stated, the facts of the prosecution case, as gathered from the FIR, are that on 07.09.2025 at about 6:15 p.m., the complainant, namely Mufeez-ur-Rehman, along with his son, Mujeeb ur Rehman, went to the cooler room of the Rehmani Masjid for cleaning. It is alleged that during this course, an altercation ensued with the accused persons, namely Muhammad Alam, Muhammad Noor, Muhammad Zakaria, and Muhammad Umer Hamza. During the quarrel, the principal accused Muhammad Umer Hamza allegedly took out his pistol and fired upon the complainant and his son on the alleged instigation of Muhammad Zakaria, resulting in the death of the complainant's son, Mujeeb ur Rehman, and causing injury to the complainant himself. The FIR was lodged on 07.09.2025 at 3:30 a.m., naming the present applicants among others.

3. The applicants were arrested and their post-arrest bail was declined by the learned Additional Sessions Judge-XI, Karachi West, vide order dated 13.10.2025, hence the present bail application before this Court.

4. Learned counsel for the applicants advanced his submissions and he argues that the principal accused, Muhammad Umer Hamza, has been assigned the direct and specific role of firing, which resulted in the death of the deceased and injuries to the complainant. He contends that applicant Muhammad Zakaria is alleged only to have uttered the words, *“Kill them, I will handle whatever shall come”*, which, even if assumed to be true, do not constitute abetment or instigation within the contemplation of law, particularly when such words were allegedly spoken in the heat of a sudden quarrel. He further argues that applicant Muhammad Alam has not been assigned any overt act, and the sole allegation that he “locked the cooler room” has no nexus with the commission of murder. He submits that no weapon or incriminating article has been recovered from either of the applicants, nor has any discovery been made at their instance under Article 40 of the Qanun-e-Shahadat Order. He maintains that the allegation of common intention under Section 34 PPC is unsupported by any independent material to establish prior meeting of minds or a pre-arranged plan. He further contends that the prosecution case is entirely circumstantial, resting solely on the complainant’s statement recorded under Section 154 Cr.P.C., which requires deeper scrutiny at trial. He asserts that the case of the applicants squarely falls within the ambit of “further inquiry” as envisaged under Section 497(2) Cr.P.C. Lastly, he prays that the applicants be admitted to bail.

5. Learned counsel for the complainant vehemently opposed the bail applications. He argues that both applicants were present at the scene of occurrence and their collective conduct demonstrates active participation in the offence. He contends that the applicants made no effort to restrain or prevent the principal accused from firing, which, in the circumstances of the case, reflects their shared common intention. He further submits that the instigating words allegedly spoken by Muhammad Zakaria, coupled with the conduct of Muhammad Alam in allegedly locking the cooler room, sufficiently connect them with the commission of the offence under Section 34 PPC. He maintains that the nature of the offence, resulting in the death of one person and injuries to another within the premises of a Masjid, reflects its gravity and warrants denial of bail.

6. Learned Additional Prosecutor General (A.P.G.) for the State also opposed the concession of bail. She argues that the offence carries severe consequences and falls squarely within the prohibitory clause of Section 497 Cr.P.C. She contends that the applicants’ presence, conduct, and utterances, when viewed collectively, establish a shared intention and joint liability under Section 34 PPC. She further submits that releasing the

applicants at this stage may adversely affect the administration of justice, as the allegations involve a brutal act committed in a place of worship. She maintains that the material available on record sufficiently connects the applicants with the crime and does not justify the relief of bail. She therefore prays that the applications be dismissed.

7. I have heard the learned counsel for the parties and carefully perused the material available on record. The tentative assessment of evidence reveals that the role of actual firing, resulting in the death of the deceased and injury to the complainant, has been attributed exclusively to Muhammad Umer Hamza, who is the principal accused and already in custody along with the weapon of offence. The applicant Muhammad Zakaria is alleged only to have instigated the co-accused verbally. There is, however, no independent witness or corroborating material to substantiate such allegation apart from the complainant's statement. The element of *mens rea* (intention) or *actus reus* (overt act) required for abetment is not prima facie established. The applicant Muhammad Alam is not alleged to have fired any shot, carried any weapon, or made any utterance indicating participation. The only allegation is that he "locked the cooler room", which, even if taken as true, is too remote and disconnected from the fatal act to constitute participation or common intention under Section 34 PPC. The prosecution has not placed on record any material to show prior meeting of minds, premeditation, or shared intention among the accused. Mere presence at the scene of occurrence does not, by itself, attract liability under Section 34 PPC unless it is coupled with active participation, facilitation, or conduct clearly demonstrating a shared common intention. The investigation in the present case stands completed, and the principal accused has been arrested along with the recovery of the weapon of offence. Therefore, the continued detention of the applicants would serve no useful purpose. In similar circumstances, in the case of **Wajid Ali v. The State and another (2017 SCMR 116)**, the Honourable Supreme Court of Pakistan observed that: "From the contents of the FIR, it cannot be out-rightly said that there was a common intention to commit crime. It prima facie appears that repairing of the common wall was the reason that provoked the accused. The conclusion that there was common intention can only be reached after the evidence in the matter comes on the record. So far as the role of causing injury on the person of the complainant is concerned, it is admitted position that the said injury was reported to be ghair jaifa. The petitioner in this view of the matter cannot be kept behind the bars for an indefinite period. In the circumstances, the petitioner has made out a case for post-arrest bail. This petition is therefore converted into appeal

and is allowed and the impugned order is set aside.....” Emphasis is supplied.

8. The narration in the FIR suggests that in the state of shock and grief, the complainant nominated multiple individuals, which is a common occurrence in such incidents, as recognized by superior Courts. The applicants have no previous criminal record nor are they shown to be hardened criminals. It is a settled principle of law that bail should not be withheld as punishment, and that where no direct role or overt act is attributed to an accused, and the case calls for further inquiry, bail should ordinarily be granted.

9. In the present case, the absence of a direct role, lack of recovery, no corroboration of instigation, and completion of investigation render the matter one of further inquiry as envisaged under Section 497(2) Cr.P.C.

10. In view of the foregoing discussion and the tentative assessment of the available material, I am of the considered view that the case against the applicants calls for further inquiry within the meaning of Section 497(2) Cr.P.C.. The applicants are, therefore, entitled to the concession of bail.

11. Consequently, the instant Criminal Bail Application No. 2789 of 2025 is allowed. The applicants, namely: 1. Muhammad Zakaria son of Muhammad Yousuf, and 2. Muhammad Alam son of Muhammad Azam, are hereby admitted to bail subject to their furnishing a solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand Only) each and a P.R. bond in the like amount to the satisfaction of the learned Trial Court.

12. The observations made hereinabove are tentative in nature, meant only for the purpose of deciding the bail application, and shall not prejudice the case of either party at the trial stage. These are the reasons of the Short Order dated: 30-10-2025.

JUDGE