

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Bail Application No. S-216 of 2025

Applicant : Yousuf son of Abdul Khaliq Mazari,
Through Mr. Asif Ali Abdul Razzak Soomro,
Advocate

Complainant : Through Mr. Saeed Ahmed B. Bijarani,
Advocate

Respondent : The State
Through Mr. Nazeer Ahmed Bhangwar DPG.

Date of hearing : 21-07-2025

Date of order : 31-07-2025

ORDER

KHALID HUSSAIN SHAHANI, J. –Yousif Mazari, seeks post-arrest bail in a case bearing crime No.34 of 2011, registered at Police Station Miani @ Badani, District Kashmore @ Kandhkot, for offences under Sections 364, 302, 506/2, 114, 148, 149 PPC. His earlier bail application was dismissed by the learned trial court vide order dated 12.03.2025.

2. The genesis of the prosecution case is rooted in the FIR lodged by complainant Eidan Bhutto on 22.06.2011. He alleged that on 21.06.2011 at about 9:00 am, he, along with his brother Abdul Sattar and nephew Ali Mohammad, was travelling to Kashmore on a motorcycle. His other nephew, Rafique Ahmed Bhutto (the deceased), was ahead of them on his own motorcycle. Near village Yaroo Mazari, they were intercepted by accused Bachal, Yousif (applicant), Ghulam Mohammad, Dodo, Barkat, Shaukat, Shahbaz, and two unidentified individuals, who were armed with pistols and Kalashnikovs. It is alleged that on the instigation of co-accused Shahbaz and Shaukat, the accused abducted Rafique Ahmed. When Rafique Ahmed offered

resistance, co-accused Bachal allegedly fired a pistol shot at his chest, while the present applicant, Yousif, fired a shot that hit the deceased on the muscle of his left arm, causing him to fall down and expire. Thereafter, all the accused fled the scene.

3. Learned counsel for the applicant submitted that the applicant is innocent and has been falsely implicated due to prevailing enmity. He emphasized that four co-accused, namely Ghulam Muhammad, Barkat, Shaukat, and Shahbaz Ali, who were assigned roles of instigation and participated in the same occurrence, were acquitted by this Court in Criminal Appeal No.S-96 of 2017 vide judgment dated 01.06.2018. The said judgment was maintained by the Hon'ble Supreme Court through refusal of leave in Criminal Petition No. 75 of 2018, thereby attaining finality. It was contended that the case of the applicant is not distinguishable from that of the acquitted co-accused, especially when the ocular account, which was disbelieved by the appellate court, is the same that now implicates the applicant. He argued that the injury attributed to the applicant on the muscle of the arm or thigh is non-vital and cannot independently be deemed the cause of death, which was due to multiple injuries. He also referred to the unexplained delay of 29 hours in lodging the F.I.R. despite the proximity of the police station, and argued that such delay casts doubt on the veracity of the narrative. It was submitted that mere abscondence does not per se disentitle the applicant from the concession of bail, particularly when strong merits exist. Reliance was placed on *2023 SCMR 172*, *2023 SCMR 1243*, *2023 SCMR 1397*, *2014 P Cr L J 261*, *2008 SCMR 1621*, *2017 SCMR 19*, *2022 YLR 87*, *1996 SCMR 1125*, and *PLD 1996 SC 241*.

4. Conversely, learned DPG, duly assisted by Mr. Saeed Ahmed Bijarani, learned counsel for the complainant, opposed the

grant of bail. It was contended that the applicant is specifically nominated in the FIR and has been assigned a direct role of causing firearm injury to the deceased. The prolonged abscondence of more than 13 years, according to the State, manifests guilty conduct and disentitles him from equitable relief. It was further submitted that the acquittal of co-accused cannot be extended to the present applicant, as the nature of the assigned role is materially different. The death of the victim, it was argued, was the direct consequence of the armed assault by the applicant and his accomplices.

5. *Tentatively*, there is no cavil to the fact that the applicant is assigned the role of causing a firearm injury to the deceased. However, the seat of the injury at the muscle of the arm has been consistently described as non-vital, and there is no medical evidence available at this stage to affirm whether the said injury directly contributed to the death. This aspect requires deeper appreciation of evidence, best suited for determination at the trial stage. Crucially, the co-accused similarly implicated on the same ocular testimony were acquitted by this very Court in Criminal Appeal No. S-96 of 2017. That acquittal was based on the observation that the prosecution witnesses were closely related, their presence at the scene was doubtful and the ocular account was in contradiction with the medical evidence. This judgment was maintained by the Hon'ble Supreme Court upon refusal of leave. Thus, the evidentiary foundation of the case has already been substantially discredited and attained finality.

6. So far as the question that the applicant remained absconded, in this regard I would like to take the guidance from the cases of Honorable Apex Courts in like nature to satisfy this Court as to whether, in otherwise above position, is or not entitled for bail. First of all the case law relied by the learned by the learned advocate for

applicant i.e. the case of *Yousuf vs. The State* (2023 SCMR 172). A careful appraisal of the facts of the present case reveals that the core prosecution evidence against the present applicant Yousif comprises the ocular account furnished by closely related witnesses, which has already been disbelieved by this Court in a prior adjudication resulting in the acquittal of four co-accused. Notably, the evidentiary basis of the prosecution remains the same, and no independent corroboration has been brought on record to establish the role attributed to the applicant. The specific allegation against him is that he caused a firearm injury to a non-vital part of the deceased's body namely, the muscle of the arm. However, there is no material suggesting that this injury was the proximate cause of death. In these circumstances, the nature of the applicant's alleged act, coupled with the discredited ocular testimony, brings the case within the purview of further inquiry as envisaged under Section 497(2) Cr.P.C.

7. Moreover, the timing of the FIR in this case further casts doubt upon the prosecution's version. The FIR was registered with an unexplained delay of about 29 hours, despite the fact that the police station was situated only a few kilometers from the place of occurrence. This factual backdrop bears resemblance to the circumstances examined by the Honourable Supreme Court in *Hidayat Khan v. The State* (2023 SCMR 172), wherein the Court held that such unexplained delays compromise the immediacy and spontaneity of the prosecution's narrative, thereby diminishing its probative value at the bail stage.

8. The contention regarding the applicant's prolonged abscondence spanning more than thirteen years is, no doubt, a relevant consideration. However, in *different cases as relied by the learned advocate for applicant*, the Apex Court explicitly held that

mere abscondence, in and of itself, is not an adequate ground to deny bail when the accused is otherwise entitled to it on merits. The Court underscored that abscondence does not carry overriding weight in the bail calculus unless the prosecution is able to establish a prima facie case through credible and cogent evidence. In this context, the judgment rendered above assumes significant relevance. It reiterates three critical principles: firstly, that allegations unsupported by direct and reliable evidence warrant further inquiry under Section 497(2) Cr.P.C.; secondly, that delay in the registration of the FIR adversely affects the reliability of the prosecution case; and thirdly, that abscondence does not per se disentitle an accused from the concession of bail if substantial grounds exist in his favour. These principles are directly applicable to the case at hand. Accordingly, the case laws (Supra) provides judicial endorsement to the proposition that despite the applicant's long abscondence, he remains entitled to the concession of post-arrest bail, given the frailty of the prosecution's case on merits, the lack of independent corroboration, the non-vital nature of the attributed injury, and the earlier acquittal of co-accused on the same set of evidence. The cumulative effect of these considerations clearly necessitates further inquiry into the applicant's guilt, justifying the grant of bail.

9. The above view was in continuation and in line with the view of the landmark judgment of Hon'ble Supreme Court in *Mitho Pitafi v. The State* (2009 SCMR 299) and *PLD 1996 SC 241* held that abscondence alone, though relevant, is not conclusive and cannot override a strong case on merits. The other situation is covered in *2023 SCMR 1243* (Jamaluddin Case), wherein Hon'ble Supreme Court emphasized the principle of consistency where co-accused granted bail on similar footing must be treated alike, especially when both are

assigned similar roles. It further held that delay in FIR, non-vital injuries, and lack of repeated assault indicated a case of further inquiry under Section 497(2) Cr.P.C. Identically in 2017 SCMR 19 (Kaleem Ullah Case). The Court allowed bail on the ground that no specific injury was attributed to the accused, several co-accused had already been exonerated, and trial proceedings were unduly delayed. These factors justified invoking Section 497(2) Cr.P.C. for further inquiry.

10. In light of the above discussion, particularly the acquittal of co-accused on the same set of evidence, the non-vital nature of injury attributed to the applicant, unexplained delay in lodging the FIR, and the applicability of the principle of further inquiry as per Section 497(2) Cr.P.C., I am of the tentative view that the applicant has made out a case for grant of bail. His prolonged abscondence, though serious, is outweighed by merits warranting further inquiry. Resultantly, the bail application is allowed. The applicant, Yousif Mazari, is admitted to post-arrest bail subject to his furnishing a solvent surety in the sum of Rs. 200,000/- (Rupees Two Hundred Thousand only) and a P.R. bond in the like amount to the satisfaction of the learned trial court. It is clarified that the above observations are tentative in nature and shall not prejudice the case of either party at the trial stage.

J U D G E

Asghar Altaf/P.A