

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Bail Application No. S- 247 of 2025.

(Karim Bux @ Papan @ Abdul Karim and another Vs. The State)

Applicant(s): Karim Bux @ Papan @ Abdul Karim S/o Zamir and Gul Meer son of Ghulam Rasool both by caste Kharos, *Through* Mr. Safdar Ali Ghouri, Advocate.

Complainant: Nizamuddin Kharos, *Through* Mr. Shakeel Ahmed G. Ansari,

The State: *Through*, Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh.

Criminal Bail Application No. S- 409 of 2025.

(Ghulam Akbar Vs. The State)

Applicant: Ghulam Akbar S/o Ghulam Rasool by caste Kharos, *through* Mr. Abdul Hakeem Brohi, Advocate.

Complainant: Nizamuddin Kharos, *Through* Mr. Shakeel Ahmed G. Ansari.

The State: *Through*, Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh.

Date of hearing: 15.09.2025.

Date of Order: 15.09.2025.

ORDER

Ali Haider 'Ada', J:-, By this common order, both bail applications are being disposed of, as they arise out of the same Crime Number. The applicants namely Karim Bux @ Papan @ Abdul Karim, Gul Meer, and Ghulam Akbar seek post-arrest bail in Crime No.10 of 2024 registered at Police Station Usman Essani @ Bado, District Shikarpur, for offences under Sections 302, 324, 114, 147, 148, and 149, PPC. Earlier, the applicants approached the learned Sessions Judge, Shikarpur, who assigned the matters to the learned Additional Sessions Judge-I, Shikarpur, wherefrom the bail applications of applicants Karim Bux and Gul Meer were dismissed on 24.04.2025, while the bail application of applicant Ghulam Akbar was dismissed on 17.07.2025. Consequently, the applicants have assailed the said orders separately through Bail Application

No.247 of 2025 (in respect of Karim Bux @ Papan @ Abdul Karim and Gul Meer) and Bail Application No.409 of 2025 (in respect of Ghulam Akbar).

2. The brief facts of the prosecution case are that on 18.06.2024, at about 7:30 am., the applicants along with their co-accused allegedly attacked the complainant party. During the incident, deceased Bakhtiar sustained a hatchet blow on his head from co-accused Ameer Ali, while applicant Ghulam Akbar is alleged to have inflicted a lathi blow on the abdomen of the deceased. Similarly, absconding co-accused Abdul Ghafar alias Ali Dino allegedly struck the deceased with a lathi on his back. Applicant Gul Meer is alleged to have caused a lathi blow on the right arm of injured Akhtiar, whereas applicant Karim Bux alias Papan allegedly inflicted a hatchet blow on the head of injured Sachal. Thereafter, the complainant party approached the police, and after completion of requisite formalities, FIR was lodged on 19.06.2024 at about 5:30 pm, under the aforementioned sections. During investigation, the applicants were arrested on 21.06.2024, and on 25.06.2024 recoveries of lathi and hatchet were allegedly effected from applicants Karim Bux and Gul Meer on their pointation, for which a recovery memo was prepared. Subsequently, the challan was submitted under Section 173, Cr.P.C.

3. Mr. Safdar Ali Ghouri, learned counsel appearing in Criminal Bail Application No.247/2025, contends that the allegation against applicant Karim Bux is that he caused a hatchet blow to injured Sachal. However, medical evidence shows that the said injury has been declared as Shajjah-i-Khafifah falling under Section 337-A(i), P.P.C. It is further pointed out that the medical certificate as well as the radiological report confirms that no fracture was found and the injury is simple in nature. With regard to applicant Gul Meer, it is submitted that he allegedly caused a lathi blow to injured Akhtiar on his right arm. The medical officer opined that such injury falls under Section 337-F(i), P.P.C., as Jurh Ghayr Jaifah Damiyah. Even in this case, the medical certificate and the radiologist's report confirm that the injury is simple in nature and no fracture has been detected. Learned counsel further submits that the alleged recovery was effected with an unexplained delay of four days, inasmuch as the applicants were arrested on 21.06.2024 whereas the alleged recoveries were shown on 25.06.2024. He argues that such recovery does not fulfill the requirements of Article 40 of the Qanun-e-Shahadat Order, 1984. In support of his submissions, learned counsel has placed reliance upon the case

reported as *2017 SCMR 116*, an unreported order in B.A. No.345 of 2023, *2017 P.Cr.L.J Note 10*, and *2002 P.Cr.L.J 605*."

4. Mr. Abdul Hakeem Brohi, learned counsel appearing on behalf of applicant/accused Ghulam Akbar, contends that although the applicant was arrested on 21.06.2024, no recovery was effected from him. As regards his role, it is alleged that he caused a lathi blow to the deceased on the abdomen. Learned counsel submits that the postmortem report, however, *prima facie* reflects that the cause of death was due to head injury rather than any injury to the abdomen. It is further pointed out that in the relevant column of the postmortem report relating to the stomach and abdomen, the medical officer specifically declared such organs as healthy, which contradicts the contents of the FIR. Learned counsel argues that this contradiction requires determination at trial and, in the circumstances, the applicant is entitled to the concession of bail. In support of his submissions, reliance has been placed upon the cases of B.A. No.20/2025, *2017 SCMR 116* and *2008 SCMR 173*.

5. On the other hand, learned counsel for the complainant vehemently opposed the bail applications on the ground that the applicants are not only facilitators but also shared a common intention as well as played active part in causing injuries to the complainant party, as a result of which one person lost his life and two others sustained injuries. He submits that there is no denial of the occurrence, and the medical evidence fully corroborates the ocular account. Learned counsel further contends that recovery has been effected from two of the co-accused, which *prima facie* connects the applicants with the commission of the offence. He also argued that although a private settlement was made, the applicants have failed to comply with its terms. In support of his submissions, he placed reliance upon *2020 SCMR 1229*, *2020 SCMR 1278*, *2021 MLD 1176* and *2021 MLD 669*, and prayed for dismissal of the applications.

6. Conversely, learned Deputy Prosecutor General also opposed the bail applications by contending that each of the applicants has been assigned a specific role in the commission of the offence. He submits that the injuries to the complainant party were caused at their hands, and one person lost his life as a consequence. With particular reference to applicant Ghulam Akbar, it is argued that he has been assigned a direct role in causing the injury attributed to the commission of murder. Learned DPG further submits that the question

as to whether the injuries attributed to the applicants are simple or otherwise is a matter to be determined at the stage of trial, and at this stage sufficient material is available connecting the applicants with the occurrence. He further argued that recovery has also been effected from some of the applicants, which prima facie links them with the offence; therefore, they are not entitled to the concession of bail.

7. Heard the learned counsel for the parties and examined the material available on record.

8. The record reflects that the incident allegedly occurred on 18.06.2024 at about 7:30 am, whereas the FIR was lodged on 19.06.2024 at about 5:30 pm, resulting in an unexplained delay of more than thirty-four (34) hours. Though it is asserted that the prosecution witnesses approached the police for issuance of a letter for medical treatment, it is indeed surprising that, despite having ample opportunity, no prompt complaint in terms of Section 154, Cr.P.C. was lodged at that time. Such abnormal delay in setting the law into motion, without any plausible explanation, creates serious doubt upon the veracity of the prosecution case. The Hon'ble Supreme Court of Pakistan in the case of *Mazhar Ali v. The State* (2025 SCMR 318) has categorically held that unexplained delay in registration of FIR erodes the credibility of the prosecution version and renders the case doubtful. Likewise, in the case of *Jamaluddin and another v. The State* (2023 SCMR 1243), it was held that:

"...There is no denial to this fact that the FIR was lodged after an inordinate delay of about three days. The only explanation put forth by the complainant is that firstly they got the Police letter for treatment from Civil Hospital and after the treatment they lodged the FIR. However, this explanation does not seem to be impressive, especially when the Police was allegedly approached by the complainant on the very first day..."

9. So far as Bail Application No.247/2025 is concerned, the role attributed to accused Karim Bux and Gul Meer is that they allegedly caused injuries to Sachal and Akhtiar. However, according to the medical evidence, the injuries in question have been declared as *Shajjah-i-Khafifah* under Section 337-A(i), P.P.C., and *Jurh Ghayr Jaifah Damiyah* under Section 337-F(i), P.P.C., respectively. Both offences are bailable in nature, and the medical certificates confirm that no fracture was detected. In these circumstances, when the role assigned to the accused pertains only to bailable offences, they are prima facie entitled to the concession of bail.

10. Now coming to the bail application of applicant/accused Ghulam Akbar, the allegation against him is that he caused an injury to the abdomen of the deceased. However, according to the medical certificate available on record, the Medical Officer has opined that the abdomen and stomach were found to be healthy. Moreover, in the remarks section of the post-mortem report, it has specifically been noted that the head injury alone was sufficient to cause death, whereas no such head injury is attributed to the present applicant. Thus, there exists a clear contradiction between the ocular account and the medical evidence regarding the nature and effect of the injury allegedly caused by the applicant. Whether the injury attributed to Ghulam Akbar had any nexus with the cause of death is a matter that requires determination at trial. It is also a settled principle that when inconsistencies or conflicts arise between ocular and medical evidence, the matter becomes one of further inquiry falling within the ambit of Section 497(2), Cr.P.C. Furthermore, the injuries attributed to the other injured persons have already been declared bailable, while the injury alleged against the deceased, attributed to this applicant, prima facie requires deeper appreciation at trial. Reliance in this respect may be placed upon *Mir Muhammad v. The State* (2024 SCMR 805) and *Saeed Ullah and 2 others v. The State and another* (2023 SCMR 1397), wherein the Hon'ble Supreme Court has reiterated that where medical evidence does not support the ocular version, or creates doubt, the benefit thereof must go to the accused at the bail stage.

11. With regard to the alleged recovery attributed to both applicants, the same does not fulfill the mandatory criteria prescribed under Article 40 of the Qanun-e-Shahadat Order, 1984. According to the prosecution, the applicants were arrested on 21.06.2024 and, during interrogation, allegedly made statements before the police expressing their willingness to produce the incriminating articles on their pointation. However, the record does not contain any such confessional statement preceding the recovery. Instead, the only statement available in the file was recorded after the alleged recovery/discovery, which renders the entire process doubtful. This fact has also been candidly affirmed by the learned Deputy Prosecutor General, who conceded that no prior disclosure statement of the applicants exists in the police file. In these circumstances, the evidentiary value of such recovery becomes highly questionable. The Hon'ble Supreme Court, in the case of

Zafar Ali Abbasi and another v. Zafar Ali Abbasi and others (2024 SCMR 1773), has categorically held that

5.In order to bring the case within the ambit of Article 40 of the Qanun-e-Shahadat Order, 1984, the prosecution must prove that a person accused of any offence, in custody of police officer, has conveyed an information or made a statement to the police, leading to discover of new fact concerning the offence, which is not in the prior knowledge of the police. Such information or statement should be in writing and in presence of witnesses. In absence of information or statement from a person, accused of an offence in custody of police officer, discovery of fact alone, would not bring the case of the prosecution under the said Article

12. Furthermore, once such doubts arise regarding the genuineness of the alleged recovery, it is a settled principle of criminal jurisprudence that the benefit of doubt is not to be reserved only for the stage of final arguments or conclusion of trial, but the same can and should be extended even at the pre-trial stage, including consideration of bail applications. The Hon'ble Supreme Court has consistently reiterated this view in a catena of judgments; inter alia, *Muhammad Ijaz v. The State and others* (2022 SCMR 1271), *Ali Raza v. The State and others* (2022 SCMR 1245), and *Resham Khan and another v. The State and another* (2021 SCMR 2011).

13. In view of the foregoing reasons and discussion, the applicants have succeeded in making out a case for the grant of bail. Accordingly, the applicants namely 1. Karim Bux @ Papan @ Abdul Karim S/o Zamir, 2. Gul Meer son of Ghulam Rasool both by caste Kharos and 3. Ghulam Akbar S/o Ghulam Rasool by caste Kharos, are admitted to bail in Crime No.10 of 2024, registered at Police Station Usman Essani, Budo Shikarpur, subject to their furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand only) each and a personal bond in the like amount to the satisfaction of the learned trial Court. Needless to observe, the observations made hereinabove are purely tentative in nature and shall not prejudice or influence the learned trial Court, which shall decide the case strictly on its own merits in accordance with the evidence and material produced at trial.

J U D G E