

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Bail Appln. No.192 of 2025

Applicant

Muhbat Ali : through Mr. Sajjad Ahmed Khokhar,
Advocate.

The State : through Syed Sardar Ali Shah Rizvi,
Addl.P.G. Sindh for State.

Complainant, : through Mr. Abdul Raheem Jamro,
Muhammad Afzal Kaleri. Advocate.

Date of hearing. : 08.05.2025

Date of Order. : 08.05.2025

ORDER

Ali Haider 'Ada', J. Through this bail application, the applicant/accused namely Muhbat Ali seeks pre-arrest bail in Crime No. 140 of 2024, registered at Police Station Khuhra, for offence punishable under Sections 302, 337-H (ii), 114, 147, 148, and 149 PPC. The FIR reflects that the incident occurred on 24.10.2024, while it was reported on 25.10.2024. Prior to this, bail application was moved before learned Sessions Judge, Khairpur which was entrusted to Additional Sessions Judge, Gambat who declined the same vide order dated 27.02.2025.

2. The brief facts as per FIR that on 24.10.2024 complainant and his brother Muhammad Yakoob on one motorcycle while his other brothers namely Sikandar and Abdullah on other motorcycle went to Gambat Court, when they reached at Rabri Chown Khuhra they saw and identified accused persons namely, Minadad, Ayaz, Fayaz alias Amjad and Yaseen armed with pistols while two unidentified persons who were armed with Kalashnikovs, yet identified if seen. The accused Miandad made straight fire of pistol to his brother Sikandar Ali which hit on his right armpit who fell down from motorcycle while accused Ayaz made fire of pistol which

hit on his hand and accused Fayaz made straight fire on left thigh and accused Yaseen made fire of pistol in between legs and unidentified accused persons caused butts of Kalashnikovs to his brother Abdullah on his head, whose blood was oozing and fell down. On fire shots and cries many people gathered there and on seeing them accused persons fled away by making aerial firing. Later on complainant brought injured at P.S , obtained letter for treatment and went to Taluka Hospital Gambat for treatment and during treatment his brother Sikandar was died. Thereafter complainant approached at Police Station, Khuhra and lodged FIR.

3. Learned Counsel for the applicant/accused submits that incident was taken place on 24.10.2024 while the FIR was lodged with one day delay without any plausible explanation, he submits that name of present applicant does not transpire in the FIR while on supplementary statement which was recorded on 28.10.2024 almost after a delay of about 03 days , in which complainant disclosed the name of present applicant who caused butt blows of Kalashnikov to PW Abdullah as such injury was classified by the Medical Officer under section 337A(i) PPC, the same is bailable, therefore, applicant is entitled for concession of bail. In support of his contentions he places reliance upon the case of *Malik Usama Bin Tahir Awan v. The State and another* (2023 P.Cr.LJ 517), *Nazar Muhammad and another v. The State* (2022 YLR Note 78) and *Saeed Gul and another v. The State* (2023 P.Cr.LJ 823).

4. Conversely, Mr. Abdul Raheem Jamro, learned counsel for complainant submits that specific allegation of causing injury *mens rea* is very much established therefore, the applicant is not entitled for concession of pre-arrest bail.

5. On the other hands, learned Additional Prosecutor General supports the contention of learned counsel for complainant and further submits that the applicant is involved after the supplementary statement as his role is specifically described in supplementary statement, therefore, not entitled for concession of bail.

6. Heard, learned Counsel for the parties and have examined the material available on record.

7. Perusal of record reflects that the name of the applicant surfaced for the first time through a supplementary statement recorded after a delay of three days from the date of registration of FIR. This delay in recording the supplementary statement, without any plausible explanation, casts serious doubt upon the veracity of the prosecution version. It is also worth noting that the applicant and the complainant are residents of the same village, albeit belonging to different castes, which further raises questions regarding the sudden implication of the applicant at a belated stage.

8. Furthermore, the FIR itself was registered with delay and no convincing explanation has been offered for such delay, both in registration of the crime report and in recording subsequent statements. The alleged injury attributed to the present applicant pertains to prosecution witness Abdullah, which as per the medical report has been declared to fall under Section 337-A(i) PPC, Shajjah-i-Khafifah – which is bailable in nature.

9. More importantly, the applicant has not been specifically named in the FIR, nor does the FIR provide any physical description or specific role assigned to the applicant that could reasonably connect him to the alleged offence. The 161 Cr.P.C. statements of the prosecution witness, injured Abdullah, was examined on 28.10.2024, three days after the alleged incident, which further diminishes the reliability of the prosecution story and raises a strong presumption of afterthought and deliberation.

10. In light of these glaring inconsistencies and delays, a case for further inquiry within the meaning of Section 497(2) Cr.P.C. is made out.

11. In this regard reliance is placed upon an unreported case of Honourable Supreme Court in case of *Ejaz Ahmed Chaudhry v. The State*

through P.G, Punjab and others in Crl.PLA No.117 of 2024 decided on 02.05.2025, in which the Honourable Supreme Court has held that;

4. After hearing learned counsel for the petitioner as well as the learned Special Prosecutor, Punjab we have perused the available record which transpires that the petitioner was not nominated in FIR No. 103/2023 lodged with PS Sarwar Road, District Lahore on 12th May 2023 for the occurrence of 9th May 2023. The petitioner was implicated by the complainant in his supplementary statement dated 10th June 2023 on the basis of tweets/audio/video clips on social media. The admissibility, relevancy and evidentiary value of the supplementary statement of the complainant as well as the alleged tweets/audio/video clips on social media are yet to be determined at the trial which has not yet concluded despite lapse of almost two years. According to the settled principles of law, bail cannot be withheld as mere punishment. 5. The petitioner has been arrested for the allegation of hatch

12. In view of the foregoing discussion, I am of the considered opinion that the applicant/accused has successfully made out a prima facie case for confirmation of pre-arrest bail within the purview of sub-section (2) of Section 497 Cr.P.C. Accordingly, the instant bail application is allowed and the interim pre-arrest bail earlier granted to the applicant/accused vide order dated 07.03.2025 is hereby confirmed on the same terms and conditions.

13. Needless to mention that the observations made herein above are purely tentative in nature and shall not influence the trial Court.

14. The bail application stands disposed of in the above terms.

J U D G E

Ihsan/PS.