

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Bail Appln. No.S-327of 2025

Applicant

Ghulam Qadir @ Jaro. : Through Mr. Shabir Ali Bozdar,
Advocate.

The State

: Through Mr. Mansoor Ahmed Shaikh,
D.P.G. Sindh for State.

Date of hearing. : 15.05.2025

Date of Order. : 15.05.2025

ORDER

Ali Haider 'Ada', J. Through this Bail application, the applicant/accused, Ghulam Qadir alias Jaro, seeks post-arrest bail in Crime No. 39 of 2025, registered at Police Station Daharki under Sections 324, 353, 399, and 402 of the Pakistan Penal Code. The incident was reported on 27.03.2025, which is also the date of its occurrence. Prior to filing this bail application, the applicant approached the learned Sessions Judge, Ghotki, for the same relief. However, the matter was transferred to the learned Additional Sessions Judge, Daharki, who declined the bail.

2. The brief facts, as narrated in the FIR, are that on 27.03.2025, ASI Muhammad Ali Korai lodged an FIR at Police Station Daharki, stating that he, along with his subordinates, proceeded from the police station in a government vehicle, having officially departed via Roznamcha Entry No. 28-0230 dated 13.03.2025. During patrolling, the complainant party reached Raharki Bridge, where they received a spy information that six armed persons were present at a specific location with the intention of committing an offence. Acting on this information, the police party proceeded to the reported location. At about 0400 hours, in the vehicle's headlights, they saw and identified the accused persons as Ghulam Qadir son of Khuda Bux, Hanifson of Ghulam Qadir and four other unidentified persons whose faces were uncovered and could be recognized upon

sight. The complainant stopped the vehicle, alighted, and identified themselves as police officers. However, all the accused persons opened direct fire on the police party with the intent to kill. In retaliation, the police also returned fire in self-defense. The exchange of fire lasted for about 10 minutes, after which the accused persons managed to escape under the cover of darkness and nearby crops. Subsequently, the complainant returned to the police station and registered the FIR.

3. Learned counsel for the applicant/accused contends that the applicant has been falsely implicated in this case by the police. He submits that no independent person has been cited as a mashir, despite the fact that the police party allegedly proceeded to the place of incident on prior information. It is further argued that although the alleged encounter lasted for ten minutes, not a single member of the police party sustained any injury, nor was there any damage, which renders the prosecution story highly doubtful. Therefore, according to the learned counsel, the applicant is entitled to the concession of bail.

4. Learned Deputy Prosecutor General appearing on behalf of the State has opposed the bail application and contends that the applicant is involved in the commission of a serious offence. He further submits that the offence with which the applicant is charged falls within the prohibitory clause of Section 497 Cr.P.C., and as such, he is not entitled to the concession of bail. However, he could not controvert the fact that, despite the alleged encounter lasting for approximately ten minutes, no person from either side sustained any injury or even a minor scratch, nor was the government vehicle struck by any bullet. He further submits that there are a number of cases against the present applicant.

5. Heard, arguments of learned Counsel for the parties and have examined the material available on record.

6. Perusal of the record reflects that no injury was sustained by any individual during the alleged encounter, which, as per the FIR, lasted for approximately ten minutes. According to the complainant, he fired fifteen rounds from his SMG (Sub-Machine Gun); however, the mashirnama of the place of occurrence indicates that only six SMG bullet casings and five empties of a 30-bore pistol were recovered from the scene. This apparent discrepancy between

the complainant's claim and the physical evidence casts doubt on the veracity of the prosecution's version.

7. The mere pendency of criminal cases against the applicant is not a valid ground for refusal of bail, especially when the learned counsel for the applicant has placed on record certified copies of judgments in a number of those cases, in which the applicant was acquitted. These judgments, passed by various Competent Courts including the learned I-Additional Sessions Judge (MCTC), Ghotki; IVth Additional Sessions Judge, Mirpur Mathelo; III-Additional Sessions Judge, Ghotki; Sessions Judge, Ghotki; and Ist Civil Judge & Judicial Magistrate, Ghotki, reinforce the presumption of innocence, which remains intact in favour of the applicant at this stage. Even mere pendency or nomination of an accused in criminal cases is not a ground to refuse or deprive him of the concession of bail, unless and until there is a legal verdict from a competent court of law against him. Reliance is placed upon *Qurban Ali v. The State* (2017 SCMR 279).

8. It is well-settled that the principle of *presumption of innocence* is a cornerstone of criminal jurisprudence, and the accused is to be treated as the "favored child of law." Therefore, unless compelling reasons exist to deny bail, the benefit of this presumption cannot be withheld.

9. Furthermore, this appears to be a case of ineffective firing, as neither the police personnel nor the government vehicle allegedly present at the scene received any damage or injury. In light of these facts, the applicability of Section 324 PPC, pertaining to the attempt to commit murder requires deeper scrutiny during trial. The absence of injuries or any significant damage makes the alleged encounter itself appear doubtful. Reliance is placed upon the cases of *Iltaf Ahmed v. The State* (2022 MLD 1367), *Zubair and 2 others v. The State* (2021 YLR 2190), *Yousuf and others v. The State* (2021 YLR 843), and *Muhammad Raees v. The State* (2020 PCrLJ Note 199).

10. Moreover, the inclusion of Section 399 PPC (preparation to commit dacoity) seems to be misapplied, as there is nothing on record to establish that the applicant was part of any gang or group with the intent to commit dacoity. There is also no evidence brought forth during investigation showing that the

applicant/accused belongs to a gang of thieves, nor has any recovery supporting such an allegation been made.

11. It is also relevant to note that the investigation in the case has been completed, and the applicant/accused is no longer required for custodial interrogation. In view of the above circumstances, this case calls for further **inquiry** within the meaning of Subsection (2) of Section 497 Cr.P.C. Accordingly, the applicant may be considered for release on bail pending trial.

12. In view of the above, the instant bail application is allowed. Accordingly, the applicant/accused, Ghulam Qadir alias Jaro, is admitted to post-arrest bail, subject to his furnishing a solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand only) and a Personal Bond bond in the like amount, to the satisfaction of the learned trial Court.

13. It is needless to mention that the observations made hereinabove are tentative in nature and shall not prejudice the case of either party during the course of trial.

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

J U D G E

Ihsan/PS