

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Crl. Bail Application No. S-315 of 2024

Date	Order with signature of Judge
Applicant:	Fateh Muhammad S/o Abdul Rasheed Mari by Caste, R/o Jadon Colony, Gharo, Mirpur Sakro, Thatta Through Mr. Shabbir Ali Bozdar Advocate.
The Complainant:	Allah Warayo S/o Yar Muhammad, Mari by Caste, R/o Village Kodho Mari, Meharabpur. Through Mr. Achar Khan Gabol, Advocate.
The State	Through Syed Sardar Ali Shah Rizvi, Additional Prosecutor General
Date of hearing.	02-05-2025.
Date of decision.	02-05-2025.

ORDER.

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Ali Haider 'Ada',J:- Through this application, the applicant named above seeks his pre-arrest bail in Crime No. 11/2021, registered under Sections 302, 324, 148, 149, 337H(2) PPC at Police Station Kandiaro. The said FIR was lodged by the complainant, Allah Warayo. Prior to filing the instant application, the applicant had approached the learned Additional Sessions Judge, Kandiaro, for the same relief; however, his application for pre-arrest bail was declined vide order dated 13-05-2024.

2. Brief facts of the prosecution case are that the complainant lodged an FIR on 23.01.2021, alleging that the **incident occurred on 22.01.2021 at about 1730 hours**. It was stated that there existed a land dispute between the complainant's side and the accused persons, including Fatah Muhammad and others. On the date of the incident, the complainant, along with his relatives Zameer (deceased), Qalander Bux (deceased), Muhammad Khan, and Muhammad Afzal, was returning home from their agricultural land. Upon reaching the *Otaq* of Nabi Bux

Mangrio, they allegedly saw ten accused persons present, all armed with deadly weapons. The accused Fatah Muhammad (present applicant) allegedly used abusive language and accused Bashir is said to have instigated the other co-accused. It is further alleged that Fatah Muhammad then opened fire on Zameer, hitting him in the abdomen. Accused Ameer Khaskheli and Saifal reportedly fired upon Qalander Bux, causing him injuries. Due to the indiscriminate firing, their companion **Noor Muhammad alias Zulfiqar Khaskheli** also sustained firearm injuries. Thereafter, all accused fled the scene. Later on, FIR was registered. As a result of the injuries sustained, Zameer, Qalander Bux, and Noor Muhammad alias Zulfiqar Khaskheli succumbed to their wounds. **Additionally, some members of the Mangrio community also sustained firearm injuries due to the alleged blind firing by the accused.**

3. Further facts are that, after registration of the FIR, one of the co-accused, Bungal Khan, moved an application before the Deputy Inspector General of Police, Shaheed Benazirabad, requesting for re-investigation of the case. In compliance, the matter was re-investigated by an officer of the rank of Deputy Superintendent of Police (DSP), who, upon conclusion, declared the present applicant and accused Saifal to be innocent and submitted the final challan before the competent Magistrate having jurisdiction.

4. The continuation of facts are that one **Muhammad Bachal Mangrio** lodged FIR No. 12/2021 on 23-01-2021, alleging the incident occurred on 22-01-2021 at 1730 hours. Notably, the place of occurrence is identical to that mentioned in the instant FIR. In his version, Bachal Mangrio presented a second narrative of the same incident, stating that a dispute existed between the Mari and Khaskheli communities. Due to this ongoing enmity, an exchange of fire took place between both sides, resulting in injuries and deaths among members

of the Mari and Khaskheli communities, while individuals from the Mangrio community also sustained injuries during the crossfire.

5. The aforementioned facts are the relevant and material circumstances of the case.

6. Learned counsel for the applicant submits that two versions of the incident exist—one reported by the complainant and another by one Muhammad Bachal Mangrio. Both versions pertain to the same date, time, and place. However, in the second version, the applicant is not named as having participated in any assault on the Mari community. It is further contended that the actual dispute was between the complainant party and the Khaskheli community, but in an attempt to mislead the investigation, the complainant falsely implicated the applicant and attributed the incident to conflict with the Mari community. The learned counsel points out that one Noor Muhammad Khaskheli, shown as deceased in the FIR, is also mentioned as deceased in the second FIR. Moreover, the case was re-investigated by a senior police officer, who, after examining both versions and circumstances, concluded that the incident occurred between the Khaskheli and Mari communities and not between the complainant party and the applicant. Consequently, the applicant was declared innocent in the re-investigation report. The learned counsel further argues that co-accused Saifal, whose role was similar to that of the applicant (i.e., allegedly firing upon deceased Qalander Bux), has already been granted pre-arrest bail by the trial court. Thus, the applicant is entitled to the same treatment on the grounds of consistency. It is also argued that the case of prosecution is flooded by malafide and ulterior motives, which are apparent from the manipulation of facts and delayed FIRs. In support of his submissions, learned counsel has placed reliance on the case of *Saeed Ahmed and another v. The State*

(PLD 2024 SC 1241) and *Muhammad Nadeem v. The State* (2023 SCMR 184), and prays for the confirmation of pre-arrest bail.

7. Conversely, learned counsel for the complainant contends that there are specific and direct allegations against the present applicant, who is attributed with having fired upon the deceased Zameer, resulting in his death. It is argued that the plea of re-investigation is a deeper appreciation and the learned Magistrate, after considering the material on record, rightly took sent up the case to the trial Court for trial. It is the prerogative of the trial Court to adjudicate upon the veracity of the evidence, and the applicant, having a specific role assigned to him in the commission of the offence, is not entitled to the extraordinary relief of pre-arrest bail.

8. Learned Additional Prosecutor General submits that although a second version of the incident has been brought on record, the same has not been endorsed or accepted by the trial Court, which is presently seized of the matter for full-fledged adjudication. He further contends that the applicant is implicated through direct ocular evidence, which is duly corroborated by the medical record, placing him in active participation in the commission of the offence. Therefore, in the absence of any material suggesting malafide or ulterior motive on the part of the complainant or the investigating agency, the applicant is not entitled to the extraordinary relief of pre-arrest bail.

9. Heard arguments and perusal the material available on record.

10. Upon perusal of the record, it appears that the complainant in the instant FIR alleged that one Noor Muhammad alias Zulfiqar Khaskheli was murdered during the course of firing. Interestingly, in the second FIR lodged by Bachal Mangrio, the same individual has also been shown as deceased. Both FIR/s

reflect identical date, time, and place of occurrence. This clearly suggests that the case falls within the purview of a two-version incident, thereby attracting further scrutiny as to the actual sequence of events and parties involved. Reliance is placed upon an unreported authoritative pronouncement of the Honourable Supreme Court in Criminal Petition for Leave to Appeal No. 332/2025, titled *Zulqarnain Haider alias Zain vs. The State and another*, decided on 16.04.2025, wherein bail was granted on the basis of the existence of two versions of the incident. Reliance is also placed on the judgment reported as *Mujahid Hussain vs. The State* (2024 SCMR 800), wherein bail was likewise granted in view of two conflicting and cross versions of the occurrence.

11. Furthermore, with regard to the case of the applicant, it is evident from the record that a Deputy Superintendent of Police conducted a thorough re-investigation, during which the applicant was declared innocent. Admittedly, the opinion of an Investigating Officer is *ipse dixit*, however, when such an opinion is found to be strongly corroborated by other sets of evidence on record, it may be considered for the purposes of bail, particularly keeping in view that findings at the bail stage are tentative in nature. In case of *Saad Zia vs the state and others*, 2023 SCMR 1898 the Honourable Supreme Court observed that during course of investigation the name of accused was placed in column No.2 as it is established principle of law that mere fact that a person is nominated in the crime does not dub him as an accused unless and until during the course of investigation the accusation is found to be correct.

12 A malafide intent is rarely established through direct evidence; rather, it is to be inferred from surrounding circumstances. In the present case, the possibility of false implication of the applicant cannot be ruled out when assessed in light of the overall facts and attending circumstances. Similarly, the

Supreme Court of Pakistan in *Khalil Ahmad Soomro and others v. The State* (PLD 2017 SC 730) held: that At pre-arrest bail stage, it is difficult to prove the element of malafide by the accused through positive/solid evidence/materials and the same is to be deduced and inferred from the facts and circumstances of the case.

13. Another significant aspect of the case is that a co-accused Saifal, who is specifically alleged to have fired upon the deceased Qalander Bux, has already been granted bail and neither the complainant nor the State has sought cancellation of the same. The role attributed to the present applicant is almost identical in nature, thereby entitling him to similar treatment under the law. Reliance is placed upon the unreported judgment of the Honourable Supreme Court in Criminal Petition for Leave to Appeal No. 225-L/2025, titled *Mudassar Khursheed vs. The State and another*, decided on 08.04.2025, wherein the Honourable Apex Court, while applying the rule of consistency, was pleased to grant bail. It was observed that the role of the petitioner was, to a great extent, at par with that of the co-accused who had already been extended the benefit of bail. Therefore, on the principle of consistency, the petitioner was also held entitled to the same concession.

14. It is imperative at the time of deciding bail applications, that the matter be examined within the broader constitutional framework, keeping in view the fundamental rights enshrined in the Constitution, particularly those relating to liberty, dignity, due process, and the right to a fair trial. Malafide, being a state of mind, may not necessarily be proved through direct evidence; however, it can legitimately be inferred from the surrounding circumstances, such as the absence of incriminating material against the accused or the lack of any lawful or bonafide purpose behind the intended arrest. Reliance in this regard is placed

upon the case rendered by the Hon'ble Supreme Court in the case of *Shahzada Qaiser Arfat alias Qaiser v. The State and another* (PLD 2021 SC 708).

15. Further in case of *Mudassar Khursheed supra* the Honourable Apex Court held that it is well settled principle of law that once Court reaches at the conclusion that in case of dismissal of pre-arrest bail the accused would become entitle for post arrest bail , then it would be a mere futile exercise to send the accused in prison. Further reliance in this regard may also be placed on cases tilted *Muhammad Ramzan vs Zafar Ullah and another* 1986 SCMR 1380 and *Khair Muhammad and another Vs The State through PG Punjab and another* 2021 SCMR 130.

16. In view of the foregoing discussion, the applicant/accused has succeeded in making out a 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 hereby allowed and the interim pre-arrest bail granted vide order Dated 20-05-2024, to the applicant/accused is confirmed on the same terms and conditions.

17. Needless to mention, the observations made herein above are purely tentative in nature and shall not prejudice or influence the learned Trial Court in the final adjudication of the case on its merits.

J U D G E

Ihsan/PS.