

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERBABB

Criminal Bail Application No. S-1479 of 2025
[*Muhammad Asif v. The State*]

Before:
JUSTICE RIAZAT ALI SAHAR

Applicant: Muhammad Asif (present on interim pre-arrest bail through Mr. Imtiaz Ali Abbasi, Advocate.

Respondent: The State through Ms. Rameshan Oad, D.P.G. Sindh.

Complainant: Jans Khan through Mr. Samiullah Rind, Advocate

Date of Hearing: 25.02.2026

Date of order: 25.02.2026

ORDER

RIAZAT ALI SAHAR, J: - Through the instant captioned application, the applicant/accused seeks the extraordinary relief of pre-arrest bail in Crime No. 103/2025 registered at Police Station Tando Yousuf, Hyderabad, under sections 324/34 PPC.

2. Brief facts of the case are that complainant Jans Khan lodged FIR No. 103/2025 at Police Station Tando Yousuf, Hyderabad alleging that on 18.11.2025 near Mirpurkhas Road, the applicant along with co-accused allegedly made a firearm attack upon his son Nadir Khan causing injury. The case arises out of an admitted prior matrimonial dispute between the families, as the complainant's son had divorced the sister of the present applicant. The applicant contends that due to said enmity he has been falsely implicated and no such occurrence took place.

3. Learned counsel for the applicant argued at length that the applicant has been falsely implicated due to admitted matrimonial enmity between the parties arising out of divorce of the complainant's son with the sister of the applicant; that the FIR has

been lodged with unexplained delay which makes the prosecution story doubtful; that no independent witness from the alleged place of occurrence has been cited and all witnesses are interested relatives; that co-accused have already been granted pre-arrest bail on identical allegations; that the case calls for further inquiry within the meaning of section 497(2) Cr.P.C.; and that arrest of the applicant would only result in humiliation and abuse of process of law, therefore he is entitled to the concession of pre-arrest bail.

4. Conversely, the learned Deputy Prosecutor General opposed the grant of pre-arrest bail and contended that the applicant has been specifically nominated in the FIR with a definite role of making straight fire upon the injured; that the offence under section 324 PPC is serious in nature; that sufficient material connecting the applicant with the commission of offence is available on record; and that pre-arrest bail being an extraordinary relief cannot be extended to an accused involved in a direct act of firing, therefore, the application is liable to be dismissed.

5. Heard and record perused. The main issue to be adjudicated upon is whether, in the facts and circumstances of the case, the applicant has been able to make out a case of *mala fide*, ulterior motive, or further inquiry so as to entitle him to the extraordinary concession of pre-arrest bail under section 498 Cr.P.C.

6. It has been observed from the record that the co-accused namely Khan Afzal and Samiullah have already been admitted to pre-arrest bail by the learned trial Court vide order dated 29.11.2025, whereas the present applicant was declined the same relief in the very same order despite the allegations against all the accused persons arising out of one and the same transaction. The rule of consistency, which is a recognized principle of criminal jurisprudence, requires that similarly placed accused should receive similar treatment unless distinguishing circumstances are available **[Muhammad Atif v. The State and another (2024 SCMR 1071)]**. No such exceptional circumstance has been pointed out by the

prosecution which may justify discriminatory treatment against the present applicant.

7. Admittedly, both parties are closely related to each other. The injured Nadir Khan was married to the sister of the applicant Muhammad Asif and the marriage was dissolved by way of divorce on 19.11.2022. The existence of prior matrimonial dispute between the parties is thus acknowledged in the FIR itself. Such admitted strained relations provide a possible motive for false implication and at least create a circumstance requiring deeper appreciation of evidence, which at the bail stage brings the matter within the purview of further inquiry.

8. The medical evidence also assumes significance. The injury attributed to the firing has been opined to fall within section 337-F (iii) PPC (Ghayr-Jaifah), situated on the lower part of the right leg. There is no fracture of bone, no repeated firing and only a single shot allegedly landed upon a non-vital part of the body. The nature, seat and extent of injury *prima facie* do not fully correspond with the allegation of a targeted attempt to commit qatl-i-amd and the determination of intention would necessarily be a matter for trial.

9. Furthermore, the investigation has already been completed and challan has been submitted before the competent Court. Thus, interrogation of the applicant is no longer required and his further physical custody would serve no useful purpose. It is also noteworthy that the applicant was granted interim pre-arrest bail which has remained intact and was confirmed vide order dated 25.02.2026, and during this period no misuse of concession or attempt to influence the investigation has been reported by the prosecution, hence no custodial necessity [***Javed Iqbal v. The State through Prosecutor General of Punjab and another (2022 SCMR 1424)***].

10. Another significant aspect which cannot be ignored is the legal threshold required for the grant of pre-arrest bail. It is now well settled that such relief is not meant to be withheld merely on account of seriousness of allegation; rather the Court is required to examine

whether the arrest appears necessary for investigation or is being sought for the purpose of harassment. The record does not reflect any recovery to be effected from the present applicant nor any investigative step dependent upon his custody. In such circumstances, insistence upon arrest would be punitive rather than investigative in character, which law does not countenance.

11. It is equally important to observe that criminal law must operate as an instrument of justice and not as a means of private vengeance. Where the dispute emanates from acknowledged family hostility, the Court is required to adopt greater circumspection before allowing arrest which may irreparably damage the reputation and liberty of a citizen prior to adjudication. The element of *mala fide* need not be conclusively established at the bail stage; a reasonable possibility thereof is sufficient to attract the protective jurisdiction of this Court.

12. Furthermore, the prosecution has not shown any exceptional circumstance differentiating the role of the present applicant from that of the co-accused who already stand admitted to bail. The discretion of the Court, though wide, must operate on rational parameters. Selective denial of liberty in identical circumstances would offend the principle of equal treatment before law and undermine public confidence in judicial consistency.

13. The Court is also mindful that the tentative assessment at bail stage does not amount to appreciation of evidence as required for conviction. The ocular account, medical evidence, motive and intention are matters which require full-fledged trial and cross-examination. At this preliminary stage the Court only examines whether accusation calls for deeper probe; and whenever two interpretations of the available material are reasonably possible, the one favouring liberty deserves preference. Reliance placed upon *Muhammad Ijaz v. The State and others (2022 SCMR 1271)*

14. Finally, pre-arrest bail serves the constitutional objective of safeguarding dignity of a person against unnecessary humiliation. Arrest should not become a mechanical consequence of accusation.

Where the investigation has crystallized into a challan and the accused has joined proceedings without misuse of concession, continuation of protective bail aligns with the settled principle that liberty is the rule while incarceration prior to conviction remains the exception.

15. In view of the admitted enmity, the nature of injury, the rule of consistency with co-accused and the completion of investigation, the case of the applicant *prima facie* falls within the ambit of further inquiry at this tentative stage, therefore, the bail application was **allowed** vide short order dated 25.02.2026 and these are the reasons for the same.

16. Needless to mention here that the observation made hereinabove are meant for disposal of the instant application which shall have no effect on merits of the case of either side.

17. Let a copy of this order be transmitted to the trial Court for information.

JUDGE

Approved For Reporting

Ali.