

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERBABD**Cr. Bail Application No.S-1588 of 2025.***[Ghulab @ Gulab Khoso & another V. The State]***Before:****JUSTICE RIAZAT ALI SAHAR.**

Applicants/Accused: **Through** Syed Shafique Ahmed Shah, Advocate.

Complainant: **Through** M/s Aijaz Ahmed Shaikh and Kamran Baig, Advocates.

The State: Mr. Siraj Ahmed Bijarani, Assistant Prosecutor General alongwith I.O/Inspector Allan Khan.

Date of Hearing: 02.03.2026.

Date of Decision: 02.03.2026.

ORDER

RIAZAT ALI SAHAR, J: - Through the instant pre-arrest bail application filed under Section 498 Cr.P.C., the applicants/accused namely Ghulab @ Gulab Khoso and Ali Nawaz Khoso @ Ali Nawaz seek the extraordinary concession of pre-arrest bail in connection with Crime No.133 of 2025, registered at Police Station Matiari, offences punishable under Sections 324, 504, 114, 337-A(i), 337-F(i) and 34 PPC. Earlier, bail plea of the applicant was declined by the Additional Sessions Judge, Matiari vide order dated 22.12.2025.

2. The brief facts of the case, as set out in the FIR, are that the complainant Sohail Ali S/o Ishaque Khoso, a labourer by profession, appeared at Police Station Matiari on 30-09-2025 and lodged the present FIR regarding an incident allegedly occurred on 28-09-2025 at about 06:30 p.m. near "Bacha Band" situated close to the houses of the parties. It is alleged that due to an old dispute between the complainant party and the accused persons, the nominated accused namely Nawaz S/o Ghulam Hussain, Hameer S/o Qambar, Sanwan S/o Samoon and Gulab S/o Aarib arrived there armed with hatchets, hurled abuses and threatened the complainant party. During the occurrence,

accused Sanwan allegedly instigated his companions, whereupon accused Nawaz inflicted hatchet blows upon Javed, accused Hameer caused a hatchet injury to Sajo on his wrist, while accused Gulab allegedly inflicted a hatchet blow upon the complainant Sohail, hitting his left thigh. Upon raising hue and cry, witnesses namely Zameer and Sadam arrived at the place of occurrence, whereafter the accused persons allegedly fled from the spot. The injured persons were initially taken to Police Station Matiari for obtaining a medical letter and thereafter shifted to DHQ Hospital Matiari and subsequently referred to Civil Hospital Hyderabad for treatment, whereafter the complainant reported the matter to the police, leading to registration of the present crime for the above stated offences.

3. Learned counsel for the applicants contended that the applicants have been falsely implicated in the present case due to longstanding enmity and previous disputes between the parties. He argued that the FIR has been lodged with a delay of about two days without any plausible explanation, which prima facie reflects deliberation and consultation on the part of the complainant party. It was further submitted that the allegations levelled against the applicants are exaggerated and do not attract the prohibitory clause of Section 497 Cr.P.C., as the injuries attributed to the applicants are on non-vital parts of the body and are minor in nature. Learned counsel further argued that there exists a counter version of the same occurrence and a cross-FIR has also been lodged by the relatives of the applicants against the complainant party, in which the accused persons from the complainant side have already been granted bail; therefore, on the principle of consistency the present applicants are also entitled to the same concession. It was also contended that nothing incriminating has been recovered from the applicants, the allegations require deeper appreciation of evidence and thus call for further inquiry within the meaning of Section 497(2) Cr.P.C. Learned counsel lastly submitted that the applicants are respectable citizens, have no previous criminal record.

4. Conversely, learned counsel for the complainant vehemently opposed the grant of pre-arrest bail to the applicants and contended that the applicants are specifically nominated in the FIR with active and direct roles in

the commission of the offence. He submitted that the applicants along with their co-accused, while being armed with hatchets, formed an unlawful assembly and intentionally inflicted injuries upon the complainant party with the common object of causing their murder. It was further argued that the ocular account furnished in the FIR is fully supported by the medical evidence which corroborates the injuries sustained by the complainant and other injured persons. Learned counsel maintained that the allegations against the applicants are grave in nature and disclose a prima facie case against them, therefore, the extraordinary relief of pre-arrest bail, which is meant only for exceptional circumstances where mala fide or ulterior motive on the part of the complainant is established, cannot be extended to the applicants. He lastly contended that the applicants are influential persons of the locality and if admitted to bail they may misuse the concession by intimidating the complainant and prosecution witnesses, therefore, the instant bail application is liable to be dismissed.

5. Learned Assistant Prosecutor General also opposed the instant bail application and adopted the arguments advanced by the learned counsel for the complainant. He submitted that the applicants are specifically nominated in the FIR with distinct and active roles and the allegations against them are supported by the medical evidence available on record. He contended that the applicants, along with their co-accused, while being armed with hatchets, caused injuries to the complainant party and the manner of occurrence clearly reflects their common intention. It was further argued that the relief of pre-arrest bail is an extraordinary concession which can only be granted in exceptional circumstances where mala fide or ulterior motive on the part of the complainant is apparent on the face of the record, however, no such circumstances exist in the present case. He therefore prayed that the instant bail application may be dismissed.

6. Heard learned counsel for the parties, learned Assistant Prosecutor General, and perused the record with their able assistance. The controversy requiring determination in the instant matter is whether the applicants have been able to make out a case for the extraordinary relief of pre-arrest bail by showing, on a tentative assessment, that their intended arrest is tainted by

mala fide, ulterior motive, or abuse of process, or whether the material available on record prima facie connects them with the commission of the offence and disentitles them to such concession.

7. At the very outset, it needs hardly be reiterated that pre-arrest bail is not to be treated as a matter of course. It is an extraordinary relief in criminal jurisdiction and is granted only in exceptional circumstances to protect an innocent person from humiliation, harassment, or abuse of the process of law. It is now well settled that the considerations governing pre-arrest bail are distinct from those applicable to post-arrest bail, and an applicant seeking such concession must first show good grounds suggesting mala fide, ulterior motive, or a design to disgrace him through arrest. The superior Courts have repeatedly emphasized that pre-arrest bail is not to be used as a substitute for post-arrest bail.

8. Keeping the above principle in view, I have tentatively examined the case of the present applicants. The FIR nominates the accused persons with specific roles. So far as applicant Gulab is concerned, a direct allegation has been leveled that he inflicted a hatchet blow upon the complainant Sohail hitting his left thigh. The prosecution case, therefore, is not one of vague nomination or mere presence. The allegation is definite, role-specific and supported by the ocular account set out in the FIR. Likewise, the occurrence is alleged to have arisen out of an admitted previous dispute between the parties, and the prosecution version is that the accused persons came armed with hatchets, hurled threats and abuses, and then acted in furtherance of their common intention. At this stage, such direct nomination with a specific part attributed to an applicant cannot be lightly brushed aside while considering a request for the extraordinary concession of pre-arrest bail.

9. As regards applicant Ali Nawaz, the learned defence counsel attempted to argue that the FIR does not clearly identify the injured to whom his blow was attributed. Even if such argument is tentatively noticed, the same, by itself, is not sufficient to infer mala fide on the part of the complainant so as to attract pre-arrest bail. The FIR still contains a straightforward prosecution version that the accused party arrived armed, attacked the complainant side

and caused injuries during the same transaction. Whether any discrepancy exists in the exact description of the injury, the seat thereof, or the identity of the injured for a particular blow, is a matter touching the appreciation of evidence and may be more appropriately examined at Trial. Such arguable points do not automatically translate into entitlement to pre-arrest bail unless the applicants first cross the threshold of establishing mala fide or abuse of process, which, in the present case, they have failed to do.

10. Much emphasis was laid by the learned defence counsel upon the delay of about two days in lodging the FIR. No doubt, delay in registration of a criminal case may, in a given matter, be a circumstance relevant for tentative assessment; however, such factor is not to be viewed in isolation. Here, the prosecution case itself states that the injured were first taken for medical treatment, initially to DHQ Hospital Matiarri and then to Civil Hospital Hyderabad. In cases of physical violence resulting in injuries, the immediate concern of the family ordinarily remains medical assistance to the injured. Therefore, mere delay of two days, in the facts of the present matter, does not by itself irresistibly lead to the conclusion that the entire prosecution case is fabricated or that the complainant acted with such patent mala fide as would justify pre-arrest bail. The superior Courts have repeatedly held that delay may be a relevant circumstance but it has to be examined alongside the entire attending facts of the occurrence.

11. The next limb of the defence case is that there is admitted enmity and a counter version, and since the opposite side has been granted bail in the cross-case, the present applicants are also entitled to the same concession on the rule of consistency. There can be no cavil with the proposition that parity and consistency are important considerations in bail jurisprudence, and the Supreme Court has recognised that similarly placed accused should ordinarily receive similar treatment. At the same time, the rule of consistency is not an inflexible formula; it applies only when the role, circumstances and evidentiary position of the accused seeking bail are at par with those of the person already enlarged on bail. It does not operate mechanically, particularly in matters of pre-arrest bail where the foundational requirement still remains the proof of mala fide or ulterior motive. The recent discussion in case of

Muhammad Nadim v. The State (2023 SCMR 184) shows that consistency is relevant, but only where the cases are truly comparable.

12. In the present matter, the defence has referred to a cross-FIR and previous hostility between the parties. Such circumstance may indeed show that both sides are inimical to each other; however, admitted enmity is always a double-edged circumstance. It can furnish motive for false implication, but equally it may provide motive for the occurrence itself. Therefore, mere existence of enmity or cross-cases is not by itself sufficient to infer mala fide in favour of the accused for the purpose of pre-arrest bail. The Court is required to see whether the accusation is so inherently absurd, patently false, or manifestly actuated by ulterior motive that arrest would amount to abuse of process. No such exceptional feature has been brought on record here.

13. The argument that the alleged injuries fall outside the prohibitory clause and are on non-vital parts of the body also does not materially advance the applicants' case in the context of pre-arrest bail. The nature of injury may be a relevant consideration for post-arrest bail and for deciding whether the matter calls for further inquiry under Section 497(2) Cr.P.C.; however, pre-arrest bail stands on a different footing. Even in cases where the offence may not fall within the prohibitory clause, an applicant seeking anticipatory bail must still establish mala fide, ulterior motive, or abuse of authority. The extraordinary jurisdiction under Section 498 Cr.P.C. cannot be invoked merely because a plausible argument is available on merits or because the offence, on eventual medical assessment, may travel into a lesser provision.

14. Likewise, the plea that nothing incriminating has been recovered from the applicants is of limited assistance at this stage. Recovery is not the sole foundation of criminal accusation, particularly where the prosecution case rests upon direct ocular account of injured witnesses. In the present case, the accusation is not based upon a concealed or inferential role; rather, the applicants are specifically named and assigned active participation in the occurrence. In such circumstances, absence of recovery does not, by itself, demolish the prosecution case so as to entitle the applicants to the exceptional concession of pre-arrest bail.

15. The learned counsel for the applicants also argued that the matter requires further inquiry. This submission again conflates the grounds of post-arrest bail with those applicable to pre-arrest bail. The Supreme Court has explained that while merits can be tentatively touched even in pre-arrest bail, the Court must remain conscious that the jurisdiction is fundamentally aimed at preventing abuse of arrest and not at conducting a mini trial or granting anticipatory relief merely because a debatable point exists. Unless mala fide or ulterior motive is first shown, the mere availability of arguable points on merits does not justify pre-arrest bail.

16. The totality of the material, when tentatively assessed, shows that the applicants are specifically nominated in the FIR; definite roles have been assigned; the prosecution version is not one of anonymous or chance substitution; the admitted previous enmity cuts both ways; **and no convincing material has been produced to demonstrate that the complainant or the police acted with such patent mala fide, ulterior motive, or abuse of process as would justify the extraordinary relief of pre-arrest bail.** In these circumstances, this Court is not persuaded that the case of the applicants falls within the narrow and exceptional parameters settled for grant of anticipatory bail. The submissions advanced on behalf of the defence may well be examined by the trial Court at the appropriate stage and strictly in accordance with law, but the same do not furnish sufficient ground for continuation of extraordinary pre-arrest protection.

17. For the foregoing reasons, the instant pre-arrest bail application was **dismissed** vide short order dated **02-03-2026**, and these are the reasons for the same. It is, however, clarified that observations made herein are purely tentative in nature and shall not prejudice either party at the Trial or while deciding any post-arrest bail application, if so filed, as the parameters governing post-arrest and pre-arrest bail are distinguishable.

JUDGE

Approved for Reporting.

Ali.