

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERBABD

Criminal Bail Application No. S-1424 of 2025
[*Sadam Hussain @ Sadam @ Kalu v. The State*]

Before:
JUSTICE RIAZAT ALI SAHAR

Applicant/Accused: Through Mr. Waheed Ahmed Awan,
Advocate

Complainant: Through Mr. Zafar Ali Vighio,
Advocate.

The State: Ms. Rameshan Oad, DPG, Sindh along
with SIP / SHO Rasheed Ahmed
Memon PS B-Section Nawabshah
District Shaheed Benazirabad

Date of Hearing: 27.02.2026

Date of Judgement: 27.02.2026

ORDER

RIAZAT ALI SAHAR, J. - Through this instant bail application filed under Section 498 Cr.P.C., the applicant/accused seeks the extraordinary relief of **pre-arrest bail** in connection with Crime No.147 of 2025 registered at Police Station B-Section Nawabshah for the alleged offences under Sections 302, 337-A(ii), 337-L(ii), 337-A(i), 147, 148 and 504 P.P.C.

2. The brief facts of the case, as set forth in the FIR, are that the complainant Viky son of Mohan Lal Souchi lodged the present FIR on 21-05-2025 at Police Station B-Section Nawabshah alleging therein that the accused persons, namely Sultan and Feroze sons of Khalil Makrani, along with the present applicant Sadam Hussain alias Kalu Makrani and co-accused Roshan Makrani and three unknown persons, due to previous dispute with the complainant party, came in front of the

complainant's house on 20-05-2025 at about 08:00 a.m. while armed with bricks and stones. It was alleged that upon their arrival they started abusing the complainant party and thereafter Sultan and Feroze Makrani allegedly caused brick and stone blows to Mohan Lal, the father of the complainant, on his head and other parts of the body, while the present applicant and co-accused Roshan allegedly caused brick blows to injured Sooraj on different parts of his body. On raising cries, other relatives and persons from the locality arrived at the scene and rescued the injured persons, who were then taken to hospital for treatment. Subsequently, Mohan Lal succumbed to the injuries during treatment whereafter Section 302 P.P.C. was added in the case and investigation was carried out by the police.

3. Conversely, the learned Deputy Prosecutor General opposed the grant of pre-arrest bail to the applicant/accused and contended that the applicant has been nominated in the FIR with a specific role of causing brick blows to the injured person during the occurrence and his presence at the scene of crime is clearly established from the contents of the FIR as well as the statements of the prosecution witnesses recorded under Section 161 Cr.P.C. It is further contended that the offence subsequently assumed the character of a capital offence as the injured Mohan Lal succumbed to the injuries during treatment, whereafter Section 302 P.P.C. was incorporated in the case. Learned DPG argued that the applicant has failed to establish any mala fide on the part of the complainant or the police, which is a necessary requirement for the extraordinary relief of pre-arrest bail, and that the case against the applicant does not fall within the ambit of further enquiry at this stage. He therefore prayed that the instant bail application may be dismissed in the interest of justice.

4. Heard and record perused. The principal question requiring tentative examination in the instant matter is whether, in the peculiar facts of the case, the applicant has been able to make out a case for confirmation of the extraordinary relief of pre-arrest bail by showing that his arrest would not advance the cause of justice and that the accusation, to the extent of his role, calls for deeper probe within the contemplation of section 497(2), Cr.P.C. The settled rule is that bail

before arrest is not to be granted in a routine manner; nevertheless, where the attending circumstances disclose over-implication, doubtful attribution, delayed reporting, or such features from which mala fide may reasonably be inferred, the Court is not powerless to protect liberty. In *Khalil Ahmed Soomro and others v. The State* (PLD 2017 SC 730), the Honourable Supreme Court held that, at the pre-arrest bail stage, mala fide need not always be proved through direct evidence and may legitimately be deduced from the facts and circumstances of the case. Likewise, in *Rana Muhammad Arshad v. Muhammad Rafique and another* (PLD 2009 SC 427), it was reiterated that pre-arrest bail is an extraordinary relief, yet it remains available where the material does not furnish reasonable grounds for believing that the accused is guilty, or where the process of law appears to have been set in motion for an oblique purpose. More recently, the superior Courts have also emphasised that reluctance in pre-arrest bail matters must not eclipse the accused's right to liberty and fair trial, and the Court must still examine whether sufficient incriminating material exists against the person seeking such relief.

5. In the present case, **the FIR itself, on its plain reading, attributes the fatal assault upon deceased Mohan Lal to co-accused Sultan and Feroze, who are alleged to have caused brick and stone blows to him on the head and other parts of the body, whereas the allegation against the present applicant is materially different and distinctly confined to causing brick blows, jointly with co-accused Roshan, to injured Sooraj. Thus, no specific injury, much less the fatal injury, has been assigned to the applicant in respect of the deceased.** Whether, despite such separate attribution, the applicant can ultimately be roped in with the aid of unlawful assembly or common object is a matter requiring evidence and deeper appreciation at trial. At the bail stage, the Court is concerned only with a tentative view of the available material and not with conducting a miniature trial. The Supreme Court has consistently held that deeper appreciation of evidence is to be avoided at bail stage, and any infirmity creating a reasonable doubt must tilt in favour of the accused.

6. Another circumstance of significance is that, according to the defence as well as the contents of the application, **co-accused Roshan, to whom an identical and joint role has been attributed regarding injuries to Sooraj, has already been granted pre-arrest bail by the learned Court below.** The rule of consistency, though not absolute, cannot lightly be ignored where the role attributed to two accused persons flows from the same set of allegations and no distinguishing feature of substance has been shown by the prosecution. At least tentatively, the case of the present applicant appears to stand on the same footing as that of the said co-accused in so far as the injuries to Sooraj are concerned. In such a situation, denial of the same relief to the present applicant would require strong differentiating material, which has not been pointed out before this Court.

7. It is also not without relevance that the occurrence is stated to have taken place on 20-05-2025 at about 08:00 a.m., whereas the FIR came to be lodged on 21-05-2025 at 11:00 p.m. Such delay, though not always fatal, assumes importance in a case of this nature where multiple accused have been nominated from the opposite side and the prosecution version itself suggests previous animosity between the parties. The law does recognise that unexplained or insufficiently explained delay in setting the criminal law into motion may provide room for consultation, deliberation and embellishment. In *Mazhar Ali v. The State* (2025 SCMR 318), the Supreme Court treated belated reporting as a circumstance capable of creating doubt at the bail stage. Here too, the delay is a circumstance which, when read with the prior dispute and the wide net cast in the FIR, cannot be brushed aside altogether for purposes of tentative assessment.

8. The defence has further pointed out that the **statements of the prosecution witnesses under section 161, Cr.P.C. were recorded with delay.** Without making any conclusive observation on the evidentiary worth of such statements, it may safely be observed that delayed recording of witness statements is also a recognised factor which may, depending on the facts of each case, diminish the spontaneity and confidence otherwise attached to the prosecution version. When this feature is examined alongside the delayed FIR, the

admitted background of strained relations, the separate and non-fatal role assigned to the applicant, and the grant of bail to the similarly placed co-accused, the matter, at least tentatively, travels into the area of further enquiry.

9. There is yet another aspect. The record shows that the applicant had earlier approached the learned Sessions Court, had been granted interim protection, and after recall thereof approached this Court. During the subsistence of interim relief before this Court, no allegation has been brought to notice that he misused the concession, attempted to abscond, tampered with evidence, or endeavoured to influence witnesses. The challan has already been submitted and section 302, P.P.C. was added later on account of the death of Mohan Lal. Thus, the investigative stage, in all material particulars, appears to have substantially matured, and no persuasive ground has been shown as to why custodial arrest of the applicant is now indispensable, particularly when his nominated role does not directly relate to the fatal injuries. The object of pre-arrest bail is not to obstruct lawful investigation; however, once the Court finds that the accusation against the applicant is not free from doubt and that his arrest would serve more as humiliation than investigative necessity, judicial protection may legitimately be extended. *Kamran Attaullah and another v. The State* (2021 SCMR 449) reiterates that pre-arrest bail remains exceptional and cannot be granted mechanically, but that principle cuts both ways: where the material itself does not furnish strong reasonable grounds against the applicant, the Court must not sacrifice liberty at the altar of mere allegation.

10. As to the contention of the learned D.P.G. that no mala fide has been specifically established, suffice it to observe that mala fide is seldom available in the form of direct proof. It is commonly inferred from surrounding features. In the present case, the admitted previous dispute, the delayed FIR, the delayed statements under section 161, Cr.P.C., the distinct and non-fatal role assigned to the applicant, and the concession already extended to the co-accused with identical attribution, collectively furnish sufficient indications to tentatively infer that the case of the present applicant is not one of straight and

unimpeachable involvement so as to disentitle him from the protective relief of pre-arrest bail. The principle laid down in *Khalil Ahmed Soomro* squarely applies that where the net appears to have been thrown wider and exaggeration or over-implication is prima facie discernible, such factors may themselves constitute the element of mala fide for purposes of section 498, Cr.P.C.

11. Needless to add, the heinousness of the offence by itself is not an absolute bar where the role of a particular accused is distinguishable and the material against him requires further scrutiny. The Court is not, at this stage, to pronounce upon guilt or innocence with finality. It is enough if, on a tentative assessment, reasonable doubt emerges regarding the precise extent of the applicant's culpability. The Supreme Court has repeatedly held that where the case calls for further enquiry, the benefit thereof must go to the accused even at the bail stage.

12. For the foregoing reasons, this Court was satisfied that the applicant had succeeded in making out a case for confirmation of interim pre-arrest bail. Consequently, vide short order dated 27.02.2026, the interim pre-arrest bail earlier granted to the applicant was confirmed on the same terms and conditions, and the above are my reasons.

13. It is clarified that the observations made herein are purely tentative in nature and shall not prejudice either side at the trial.

JUDGE