

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

1st Cr. Bail Appln. No.D- 03 of 2025.

1st Cr. Bail Appln. No.D- 07 of 2025.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1.For orders on office objection as flag A.

2.For hearing of bail application.

Present:

Mr. Justice Amjad Ali Sahito-J

Mr. Justice Jan Ali Junejo-J

22.4.2025.

Mr. Anwar Ali Shaikh, advocate for the applicant Gul Hassan alias Gulo Khoso.

Mr. Safdar Ali Ghouri, advocate for the applicant Pervez Ali Malghani.

Mr. Aitbar Ali Bullo, D.P.G.

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AMJAD ALI SAHITO-J:- By this common order, we intend to dispose of these two applications whereby applicants Pervez Ali Malghani and Gul Hassan @ Gulo Khoso are seeking post arrest bail in Crime No. 63 of 2023 registered with P.S Mouladad for offence under Sections 302, 324, 353, 399, 402, 148, 149 PPC & 6/7 ATA, 1997, after their bail plea was declined by learned trial court vide impugned orders dated 15.01.2025 and 12.9.2024.

2. Details and particulars of the FIR are already available in the memo of instant application, same can also be gathered from the copy of FIR attached with the application, hence need not to reproduce the same hereunder.

3. Per learned counsel for the applicants Pervez Ali Malghani and Gul Hassan alias Gulo Khoso, they are innocent and have been falsely implicated in this case due to dispute between Chachar and Jagirani community. They further submits that there is general allegation against all the accused of causing firing upon police party and no specific injury is attributed to the applicants Pervez Ali and Gul Hassan alias Gulo and they were allegedly armed with K.K and Repeater respectively; that there is conflict between ocular and medical evidence; it is impossible that fire was received by one of the accused from backside. They further argued that entire case has been proceeded. At the time of recording of evidence, another accused was arrested and now case is fixed for framing charge as such the applicants are entitled to the grant of bail. In support of their case, learned counsel

have relied upon the cases reported as Sikander Hayat v. The State (2022 SCMR 198), Awal Khan and 7 others v. The State (2017 SCMR 538), Ehsanullah v. The State (2012 SCMR 1137), Syed Khalid Hussain Shah v. The State (2014 SCMR 12).

4. Conversely, learned D.P.G for the State opposed the grant of bail.

5. We have heard learned counsel for the parties and perused the material brought on record.

6. Perusal of record reflects that police party was patrolling and on tip of information that 9 accused persons are present at the place of incident for committing an offence on which police party raided there and saw accused namely Nizamuddin 2.Jameel @Jabeel, 3.Jan Muhammad, 4.Gul Hassan @Guloo, 5.Hashim, 6.Pervez (applicant) alongwith three unknown and on seeing police party, accused persons started firing. Resultantly HC Jamsher Chachar lost his life and one of the accused Nizamuddin was also murdered at the hands of police party while DPC Noor Muhammad also received injuries.

7. So far the plea raised by learned counsel for the applicants that there is general role assigned against them, in robbery cases all accused are conjointly involved and equally responsible in the commission of offence. The dacoity is defined in Section 391 PPC which provides that when five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding is said to commit "dacoity". In the case in hand also nine accused persons including present applicants committed straight firing upon police party which resulted into murder of HC Jamsher Chachar from police side, therefore, irrespective of their role in the commission of offence, they are equally responsible with other accused conjointly.

8. The perusal of record further shows that the prosecution witnesses have supported the version of the complainant and they have fully implicated the applicants/accused with the commission of the offence. The applicants/accused are involved in a heinous offence and their case squarely falls within the prohibitory clause of section 497 Cr.P.C. The case law relied on learned counsel for the applicants/accused are quite distinguishable from the facts and circumstances of the case in hand.

9. Admittedly entire case has proceeded. It is settled proposition of law that the Courts should not grant or cancel bail when the trial is in progress and proper course for the courts in such a situation would be to direct the learned trial Court to conclude the trial of the case within a specified period. Reliance is placed in the case of as held in the case of ***Rehmatullah vs. The State and another (2011 SCMR 1332)***. Relevant portion is reproduced as under:

3. Heard. The petitioner was granted bail on 21.11.2008, which was cancelled by the learned High Court on 19.3.2009, when according to the order itself the trial was at the verge of conclusion. Learned Additional Prosecutor General stated that now only one or two witnesses are yet to be recorded. The courts should not grant or cancel bail when the trial is in progress and proper course for the courts in such a situation would be to direct the learned trial Court to conclude the trial of the case within a specified period. Reference may be made to ***Haji Mian Abdul Rafique v. Riaz ud Din and another (2008 SCMR 1206)***. We find that the impugned order was passed in violation of the law, therefore, we cannot subscribe to it. In view whereof, we are persuaded to allow this petition and direct the learned trial Court to conclude the trial of the case expeditiously.”

10. Considering the above facts and circumstances of the case, it appears that the applicants/accused have failed to make out their case for grant of bail, as, at this stage, there is sufficient material available on record to connect them with the commission of the alleged offence, hence we do not find it a fit case for grant of bail to the applicants/accused. Resultantly these bail applications are dismissed.

11. Needless, to mention here, that the observations made hereinabove are tentative in nature and would not prejudice the case of either party at trial.

JUDGE

JUDGE

Shabir/P.S