

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Application No.S- 71 of 2025

Applicants: Barkat Ali and another through
Mr. Mujeeb-ur-Rehman Malano,
Advocate

Respondent: State through Muhammad Raza
Katohar, DPG along with I.O/SIP
Muhammad Akram and Mst. Fahmida,
sister of deceased

Date of hearing: **10.06.2025**

Dated of order: **12.06.2025**

ORDER

Amjad Ali Bohio, J: Applicants/accused (hereinafter referred to as “*the applicants*”) Barkat Ali and Rehmat Ali, both sons of Allah Wasayo, seek post-arrest bail in Crime No.173/2024 registered at Police Station Abad, Sukkur, for offences under Sections 302, 201, and 34 PPC. Their application for grant of bail was dismissed by the learned Additional Sessions Judge-V, Sukkur, vide order dated 23.01.2025.

2. The facts, as narrated in the FIR, are that on 13.11.2024 at about 2100 hours, complainant SIP Abdul Razzaque Jatoi of Police Station Abad, Sukkur, lodged the instant FIR. He stated that on the same date, while on routine patrolling duty along with subordinate police officials HC Abdul Khaliq Chachar and HC Muhammad Ilyas in government vehicle No.SPC-899, driven by PC Khadim Hussain, all in uniform and duly armed, they received spy information that on 27.10.2024, Barkat Ali and Rehmat Ali, both sons of Allah Wasayo by caste Shoro, residents of Village Moula Daad Shoro, Taluka New Sukkur, along with other family members, had murdered their sister, Mst. Farida, widow of late Zulfiqar Shoro (aged about 40 years), by strangling her over a property dispute. Acting on this information, the complainant and his team proceeded to Village Moula Daad Shoro, where they inquired from local residents and met unidentified informants who confirmed the same version. Upon returning to the police station, the complainant registered the FIR under Sections 302, 201, and 34 PPC against the applicants on behalf of the State.

3. Notice was issued to the legal heirs of the deceased, namely Mst. Fatima Batool, Ms. Dur-e-Najaf, Ms. Rubab-e-Zehra, and Ms. Farhana, who appeared on 27.03.2025. Additionally, Mst. Fahmida, sister of the deceased, appeared on 10.06.2025 and expressed confidence in the learned APG to prosecute the case on their behalf.

4. Learned counsel for the applicants contended that the FIR was lodged with an unexplained and considerable delay, which casts serious doubt on the prosecution's version. He argued that the deceased committed suicide following a domestic dispute and that the applicants were falsely implicated by the police after refusing to pay illegal gratification. He further submitted that applicant Rehmat Ali had approached the learned Judicial Magistrate under Section 176(2) Cr.P.C., resulting in an exhumation order, which is yet to be executed. He pointed out that the applicants, being the real brothers and legal heirs of the deceased, were implicated in a State-initiated FIR, with no private complainant coming forward, indicating mala fide on part of the police. He emphasized that the entire prosecution case is based on official witnesses who are subordinates of the complainant SIP and are, therefore, not independent. He concluded that the applicants' case calls for further inquiry and sought their release on post-arrest bail. In support, he relied upon *Akhtar Zaman v. The State* (2018 YLR Note 149), *Muhammad Dildar v. The State* and another (2018 YLR Note 83), *Muhammad Ehsan Shah v. The State* through A.G. Islamabad and another (2025 SCMR 730), and *Ali Raza v. The State* and others (2022 SCMR 1245).

5. Conversely, the learned Deputy Prosecutor General, duly assisted by the investigating officer, opposed the bail application, submitting that the applicants are nominated in the FIR for a heinous offence, and sufficient material exists to connect them with the commission of the crime.

6. I have considered the arguments advanced by the learned counsel for the applicants and the learned DPG, and have examined the record with their valuable assistance.

7. From the facts and circumstances, it appears that the incident was un-witnessed; no eyewitness has been cited. The applicants were implicated by SIP Abdul Razzaque Jatoi on the basis of spy information. The complainant did not disclose the identity of the informer, nor was the informer cited as a witness. Moreover, no family member or other private individual was cited or examined to corroborate the alleged motive. Although Mst. Fahmida, sister of the deceased, filed an application for exhumation raising suspicion of murder, the I.O. failed to record her statement under Section 161 Cr.P.C. Her version could have been the most reliable evidence regarding the alleged property dispute motive. The prosecution has not provided any explanation for not recording her statement. It is a well-settled principle of law that when the best available evidence is withheld, a presumption under Illustration (g) of Article 129 of the Qanun-e-Shahadat Order, 1984, may be drawn that such evidence would have been unfavourable. Reference may be made to the case of *"Khalid @ Khaldi v. The State"* (2012 SCMR 327). The alleged motive, therefore, being based on suspicion, could potentially lead to false implication. The FIR was registered after unexplained delay of more than 16 days. The I.O. also admitted in court that he did not investigate the property details or record statements of legal heirs of the deceased to corroborate the motive. It is trite law that the chain of evidence must be complete, from the scene of the crime to the accused; a missing link destroys the entire chain.

8. The silence of the legal heirs of the deceased further casts doubt and suggests that the incident may not have occurred in the manner alleged. No incriminating article was recovered from or at the instance of the applicants. In this context, reference may be made to *"JabirUllah v. Said Nawab and another"* (2020 YLR 515).

9. The alleged murder of Mst. Farida, being unwitnessed is shrouded in mystery, rendering the applicability of Section 201 PPC upon the applicants as questionable, requiring further inquiry.

10. In light of the above discussion, the involvement of the applicants in the commission of the offence calls for further probe. They are, therefore, entitled to the concession of bail. Accordingly, the bail application is

allowed. The applicants are admitted to bail subject to furnishing bail bonds in the sum of Rs.250,000/- (Rupees Two Hundred Fifty Thousand only) each with two sureties in the like amount to the satisfaction of the learned trial Court.

11. Needless to mention, the observations made herein are tentative in nature and shall not prejudice the case of either party during the trial.

JUDGE

Naveed Ali