

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Application No.S- 511 of 2025

Applicant:	Yar Muhammad through Mr. Achar Khan Gabol, Advocate
Respondent:	State through Mr. Khalil Ahmed Maitlo, DPG
Date of hearing:	24.06.2025
Dated of order:	24.06.2025

ORDER

Amjad Ali Bohio, J: After dismissal of the post-arrest bail application of the applicant/accused (hereinafter referred to as ***“the applicant”***) vide order dated 04.06.2025, passed by the learned Additional Sessions Judge, Daharki, the applicant has filed the instant bail application seeking post-arrest bail in Crime No.84 of 2025, registered at Police Station Ubauro, District Ghotki, for offences punishable under Sections 399, 401, 324, and 353 of the Pakistan Penal Code.

2. It is alleged that a police party, headed by Head Constable Muhammad Aslam Rind, received spy information during patrol duty regarding the presence of armed suspects near an abandoned tube-well on Reti Road. Acting upon the said information, the police proceeded to the indicated location, where they allegedly encountered four armed individuals. The encounter reportedly lasted for approximately five minutes, during which the applicant was apprehended in an injured condition, having sustained a firearm injury to his leg, allegedly caused by one of his own accomplices. The remaining three suspects managed to escape. A 30-bore unlicensed pistol was allegedly recovered from the possession of the applicant. Upon inquiry, the applicant disclosed his identity as Yar Muhammad, son of Shabir Ahmed, by caste Gabol. His arrest was effected, and a memo of arrest and recovery was prepared at

the spot. Upon return to the police station, the aforementioned FIR was registered.

3. Learned counsel for the applicant contended that the applicant has been falsely implicated in the case due to local political rivalry instigated by influential landlords. He submitted that the applicant was, in fact, taken from his residence by the police and falsely booked in the present case after allegedly refusing to pay illegal gratification. It was further argued that the FIR was lodged with an unexplained delay of more than an hour, despite the place of occurrence being only 3 kilometers from the police station, which raises serious doubts about the authenticity of the prosecution's version. Learned counsel also highlighted that, despite the alleged encounter, no police official sustained any injuries, nor was any damage caused to the police vehicle, an aspect that undermines the credibility of the alleged encounter. The incident allegedly occurred on a busy public road (Reti Road), yet no independent private witness was associated with the investigation; instead, all mashirs are subordinate police officials, which raises concerns regarding the impartiality of the investigation. It was also pointed out that Section 399 PPC, which pertains to preparation for dacoity by five or more persons, has been misapplied, as only four individuals were allegedly involved, thereby indicating over-inclusion and mala fide intent. Lastly, it was submitted that the applicant is not a hardened criminal, has no prior convictions, and had recently returned from Saudi Arabia on leave, intending to go back thus, there is no likelihood of his absconding. Accordingly, prayer was made for grant of post-arrest bail.

4. Conversely, learned Deputy Prosecutor General opposed the bail application, contending that the applicant was apprehended at the scene during the commission of a cognizable offence, and arms were recovered from his possession. Therefore, sufficient grounds exist to deny bail.

5. I have considered the arguments advanced by learned counsel for the applicant and the learned Assistant Prosecutor General, and have also examined the available material on record.

6. On tentative assessment, certain glaring inconsistencies emerge from the record that merit consideration at the bail stage. It appears that despite having prior information regarding the presence of armed suspects at the indicated location, the police party failed to associate any private individuals to witness the anticipated recovery of weapons. Reliance in this regard is placed upon the cases of Dost Muhammad alias Dooso v. The State (2021 MLD 772) and Muhammad Ramzan alias Chotu v. The State (2020 YLR 2582). Although a police encounter is alleged to have lasted approximately five minutes, the record does not reflect any injuries to police personnel or damage to the official vehicle, whereas only the applicant is shown to have sustained a firearm injury. This renders the prosecution's version somewhat unnatural and raises doubts about the occurrence of a genuine encounter. Reliance is placed on the case of Ayaz Ali v. The State (PLD 2014 Sindh 282). Furthermore, despite the allegation that the applicant and co-accused fired directly at the police party from close range, it is noteworthy that none of the police officials sustained any bullet injuries. Additionally, the applicability of Section 399, PPC, which presupposes preparation for dacoity by five or more persons appears, prima facie, to be misapplied, as only four suspects are alleged to have been present at the scene. These aspects, when considered cumulatively, bring the case of the applicant within the ambit of "further inquiry" as contemplated under Section 497(2), Cr.P.C. Reliance is placed on the principles enunciated by the Hon'ble Supreme Court in Syed Amanullah Shah v. The State (PLD 1996 SC 241), wherein the Hon'ble Apex Court observed as under:

"To deprive a person of his freedom is most serious. It is judiciously recognized that unfortunately there is a tendency to involve the innocents with a guilty. Once an innocent is put under arrest, then he has to remain in jail for

considerable time. Normally it takes two years to conclude the trial in a murder case. Ultimate conviction and incarceration of a guilty person can repair the wrong caused by the mistaken relief of interim bail granted to him but damage to an innocent person caused by arresting him, though ultimately acquitted, would be always beyond repair. So whenever reasonable doubt arises with regard to the participation of an accused person in the crime or about the truth/probability of the prosecution case and the evidence proposed to be produced in support of the charge, the accused should not be deprived of benefit of bail. In such a situation, it would be better to keep an accused person on bail than in the jail, during the trial. Freedom of an individual is a precious right. Personal liberty granted by a Court of competent jurisdiction should not be snatched away from accused unless it becomes necessary to deprive him of his liberty under the law. Where story of prosecution does not appear to be probable, bail may be granted so that further inquiry may be made into guilt of the accused."

7. It is further noted that the investigation has been completed, the final challan has been submitted, and the applicant is no longer required for investigative purposes. There is no record of any previous convictions, nor is there any material on record to suggest that the applicant would tamper with the prosecution evidence or abscond if released on bail.

8. With regard to the contention raised by learned counsel for the applicant that the applicant had been residing in Saudi Arabia for the purpose of earning his livelihood and had returned to Pakistan on leave, the same is taken into consideration. Learned counsel further undertakes that the applicant shall deposit his original passport with the learned trial Court, where it shall remain in custody until the final disposal of the case. Upon conclusion of the case, the applicant may seek its return in accordance with law. This undertaking shall form part of the trial Court's record, and compliance shall be ensured at the time of furnishing surety.

9. In view of the foregoing, the instant bail application is allowed. The applicant, Yar Muhammad, son of Shabir Ahmed, by caste Gabol, is admitted to post-arrest bail, subject to furnishing solvent surety in the sum of Rs.50,000/- and a personal bond in the like amount to the satisfaction of the trial Court.

10. Needless to mention, the observations made herein are tentative in nature and shall not prejudice the case of either party at the trial. The instant Criminal Bail Application No. S-511 of 2025 stands disposed of accordingly.

JUDGE

Naveed Ali