

THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Bail Application No. S-670/2024

Applicant : Barkat Ali son of Gul Hassan Jatoi,
Through Mr. Zafar Ali, learned advocate

Respondent : The State
Through Mr. Nazeer Ahmed Bhangwar,
DPG for the State.

Date of hearing : 02.07.2025

Date of order : 09.07.2025

ORDER

KHALID HUSSAIN SHAHANI, J— Applicant Barkat Ali seeks post arrest bail in a case bearing crime No.67/2023 registered at P.S Saddar Jacobabad, for offences punishable under Sections 302, 147 & 148 PPC. Previously bail of applicant was dismissed by the learned Additional Sessions Judge-I/MCTC Jacobabad bearing Cr. BA No.39/2024 vide order dated: 06-08-2024.

2. The prosecution theory, as detailed in FIR lodged by complainant Abdul Kareem, alleges that on March 24, 2023, at about 06:30 a.m., applicant Barkat Ali, along with co-accused, being armed with lathies, unlawfully entered the complainant's house. It is specifically alleged that the applicant, Barkat Ali, and co-accused Ameer Bux @ Papoo inflicted lathi blows on the head of the Wali Muhammad (deceased), who subsequently succumbed to his injuries en-route to Larkana Hospital. The FIR was lodged the same day at 05:50 p.m. Following investigation, a challan has been submitted, and the case is now pending trial.

3. Learned counsel for the applicant has pressed for bail, contending that the applicant is innocent and falsely implicated. Grounds advanced include an alleged inordinate delay of eleven hours in FIR registration without plausible explanation, the absence of independent eyewitnesses (with prosecution witnesses being

inter-related), a purported contradiction between ocular and medical evidence, and a plea that the case warrants "further inquiry." It has also been argued that co-accused Ali Hassan and Din Muhammad have been granted post-arrest bail by this Court, seeking the benefit of the rule of consistency.

4. Conversely, the learned DPG for the State, assisted by the learned counsel for the complainant, vehemently opposed the grant of bail, asserting that sufficient material exists to connect the applicant with the heinous offence.

5. This Court has meticulously perused the bail application, the contents of the FIR, the available record, and has given due consideration to the arguments advanced by the learned counsel for both sides.

6. Upon a tentative assessment of the material on record, it is evident that the applicant Barkat Ali is specifically named in FIR with a direct and active role in inflicting fatal head injury upon deceased, Wali Muhammad. Such a specific attribution of a fatal blow, coupled with the medical evidence in the form of the post-mortem report supporting the prosecution's version, *prima facie*, connects the applicant to the commission of the offence of murder.

7. Regarding the contention of delay in FIR. Mere delay in registration of FIR is not always fatal. Once it is explained by the prosecution FIR is not lodged falsely. In the case of *Muhammad Ajaib Vs. Mehboob Khan* (2000 P.Cr.L.J 1484), it was observed by the Honorable Supreme Court Azad Jamu & Kashmir that "delay in lodging the F.I.R. in absence of any allegation of substitution or concoction was not fatal to the prosecution case. Eyewitnesses though closely related to the deceased had no motive for false implication of accused and they had unanimously charged him for the murder of the deceased." In the case of *Haq Nawaz Vs. The State* (2008 P.Cr.L.J 484), the Lahore High Court was of the view that the delay in lodging of FIR in absence of previous enmity would not

matter much. In the case of *Mian Muhammad Nawaz Sharif Vs. The State* (PLD 2002 Karachi 152), this Court held that lodging of F.I.R. with delay or promptness. Delay or promptness in lodging the F.I.R. shall not in all cases lead to an inference about truth or otherwise of the case set up in the F.I.R. Where the facts were remarkably peculiar and by delaying the F.I.R. prosecution had not gained anything and had produced enormous evidence which was trustworthy and believable, the delay in lodging of the F.I.R. was immaterial in circumstances. In the case of *Sher Khan Vs. The State* (1996 P.Cr.L.J 668), the Honorable Federal Shariat Court was of the view that delay per se in lodging the F.I.R. is generally not sufficient to cast a doubt whether the prosecution case unless, either by evidence or otherwise, it is shown that delay was caused as the complainant was involved in making out a false case against the accused.

8. The offence under Section 302 PPC, with which the applicant stands charged, falls squarely within the prohibitory clause of Section 497(1) Cr.P.C. This provision mandates that bail shall not be granted if there are reasonable grounds for believing that the accused has committed a non-bailable offence punishable with death or life imprisonment, unless specific exceptions apply (which are not invoked or apparent in the applicant's case).

9. As for the argument pertaining to the rule of consistency, it is crucial to distinguish the role of the present applicant from that of the co-accused, who have been granted bail. The record, including the FIR, attributes a distinct and specific fatal role to Barkat Ali. Therefore, his case cannot be considered to be at par with those co-accused who were granted bail, likely on the basis of general allegations or a lesser role. The principle of consistency applies where roles are identical or strikingly similar, which is not the case here. The repeated assertion that the case requires further inquiry also does not hold sway in circumstances where the FIR clearly spells out a specific, overt act attributed to the accused, which

is corroborated by medical evidence. The mere possibility of further inquiry, inherent in almost every criminal proceeding, is not a sufficient ground for granting bail where reasonable grounds exist to believe the accused has committed a non-bailable offence.

10. In light of the aforementioned facts and the legal principles discussed, including the specific and fatal role attributed to the applicant, the supporting medical evidence, and the nature of the offence falling within the prohibitory clause of Section 497 Cr.P.C., this Court is of the considered opinion that the applicant, Barkat Ali, has failed to make out a case for the grant of post-arrest bail. Consequently, the bail application lacks merit and is hereby dismissed. Needless to add that the above assessment are tentative in nature and shall not affect the merits of trial. Learned trial court is directed to conclude the trial preferably within 90 (Ninety) days after receipt of this order.

J U D G E

Asghar Altaf/P.A