

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

### Criminal Bail Application No.S-237 of 2025

Applicants : Anwar Ali son of Moula Bux and  
Bangul Khan son of Nek Muhammad  
Both by caste Dahani.  
Through Mr. Saeed Ahmed Bijarani,  
Advocate

Complainant : Through Mr. Abdul Ghani Bijarani,  
Advocate.

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

Date of hearing : 07.07.2025

Date of order : 16.07.2025

### **ORDER**

**KHALID HUSSAIN SHAHANI, J.**— Applicants Anwar Ali and Bangul Khan, seek post arrest bail in a case bearing crime No.01/2025, registered at Police Station Ghouspur, District Kashmore at Kandhkot, for offenses under Sections 459, 460, and 337-F(vi) PPC. Their bail plea was declined by the court of learned Sessions Judge, Kashmore @ Kandhkot vide order dated 29.04.2025.

2. The genesis of the present proceedings lies in FIR, lodged by complainant Mst. Sakina Khatoon Dahani on January 02, 2025, at 18:00 hours, at P.S. Ghouspur. The FIR recounts an incident that purportedly occurred on December 29, 2024, at about 01:00 a.m. According to the complainant, while her family was asleep, they were awakened by the barking of dogs. Upon investigation, they observed four unknown accused persons, whose faces were openly visible, entering their house armed with Kalashnikovs. These

individuals allegedly untied their buffaloes and were attempting to steal them. Upon resistance and cries of "theft," two of the complainant's sons, Abdul Khalique alias Abdul Samad and Abdul Qadeer, confronted the alleged culprits. It is stated that the accused then fired directly at the sons, resulting in the fatal injury of Abdul Khalique alias Abdul Samad and a serious injury to Abdul Qadeer. Significantly, the initial FIR did not specify the names of the accused persons and merely referred to them as "unknown."

3. The investigative trajectory of the case subsequently evolved. On January 31, 2025, the complainant, Mst. Sakina, submitted an application seeking to record a further statement under Section 161 Cr.P.C. This further statement was indeed recorded on February 03, 2025, wherein, for the first time, the names of accused Anwar Ali, Bangul Khan (the present applicants), and Muhammad Nawaz were introduced by the complainant, injured PW Abdul Qadeer, and PW Meeran Bux. Subsequently, on March 18, 2025, statements under Section 164 Cr.P.C. of injured PW Abdul Qadeer and PW Meeran Bux were formally recorded before a learned Magistrate. In these judicial statements, an additional name, Nadar Dahani, was introduced as another accused. The police later submitted a report under Section 173-A Cr.P.C. on April 08, 2025, showing the present applicants in custody while listing Muhammad Nawaz and Nadar Ali as absconders.

4. Mr. Bijarani, the learned advocate for the applicants, vigorously contended that the applicants are *prima facie* innocent and have been falsely implicated in this case due to ulterior motives. His primary contention revolved around the conspicuous absence of the applicants' names in the initial FIR. He meticulously pointed out that the FIR explicitly described the assailants as "unknown accused persons" whose "faces were opened," yet no identifiable features of

the applicants were provided therein. He argued that this initial omission, despite the purported open visibility of the culprits, fundamentally undermines the credibility of their later identification. Mr. Bijarani further submitted that the names of the applicants surfaced belatedly and progressively through subsequent statements. He highlighted the unexplained delay of about four days in the lodging of the FIR for an incident that occurred close to the police station. He then drew attention to the critical shift in the prosecution's narrative: while the initial 161 Cr.P.C. statements recorded on January 03, 2025, also failed to name the applicants, their names suddenly appeared in the further statements recorded on February 08, 2025, followed by the introduction of an additional accused in the 164 Cr.P.C. statements recorded on March 18, 2025. He asserted that such inordinate delay in identification and subsequent improvements in the statements, without plausible explanation for the initial omission, casts a serious cloud of doubt over the entire prosecution story. He vehemently argued that these discrepancies directly indicate that the prosecution's case is a result of afterthought and deliberate concoction, tailored to implicate the applicants. To buttress his arguments, Mr. Bijarani placed strong reliance on the authoritative pronouncement of the Supreme Court in *Syed Saeed Muhammad Shah & others Vs the State* (1993 SCMR 550), which unequivocally holds that "Statements recorded by the police after delay and without explanation are to be ruled out of consideration." He argued that the present case perfectly fits this dictum. Furthermore, he cited a triad of relevant case laws: 2006 MLD 235, 2008 SCMR 1556, and 1996 SCMR 511, to impress upon the Court that the circumstances surrounding the applicants' identification and implication squarely bring their case within the parameters of "further inquiry" as envisioned by Section 497(2)

Cr.P.C. He asserted that in such scenarios, bail is a matter of right, as the ultimate determination of guilt or innocence requires a full-fledged trial. Lastly, he informed the Court that the applicants are residents of the same village as the complainant, minimizing any apprehension of their abscondence or attempts to tamper with evidence.

5. The learned advocate for the complainant, Mr. Abdul Ghani Bijarani, and the learned Deputy Prosecutor General for the State, Mr. Nazir Ahmed Bhangwar, jointly and vehemently opposed the grant of bail to the applicants. They contended that the offenses involved are grave, particularly those relating to murder and housebreaking with intent to commit a serious offense. They asserted that there is sufficient material available on record to connect the present applicants to the commission of the crime. They argued that the identification of the accused, albeit delayed in formal statements, still holds probative value and that such delays can be explained during the trial process. They maintained that the subsequent statements of the complainant and the injured prosecution witnesses, recorded under Sections 161 and 164 Cr.P.C., clearly implicate the applicants. They further submitted that the veracity of the alibi or any alleged discrepancies in identification are matters of evidence that can only be conclusively determined after the recording of prosecution evidence and a full appreciation of all facts during the trial. They contended that granting bail at this preliminary stage would be premature and might impede the course of justice, potentially allowing the accused to tamper with evidence or influence witnesses. They emphasized that the gravity of the charges warrants denial of bail.

6. This Court has given deep and anxious consideration to the arguments presented by the learned counsel for all parties and

has undertaken a thorough examination of the entire record of the case, including the FIR and the subsequent police and judicial statements.

7. The cornerstone of the prosecution's case against the applicants rests on their identification by the complainant and prosecution witnesses. However, the initial FIR, lodged after a delay, conspicuously omits any mention of the applicants' names, despite the complainant's assertion that the faces of the culprits were "open" and visible. The subsequent introduction of the applicants' names in later statements, after a significant lapse of time and without convincing explanation for this initial omission, creates a substantial and unexplained improvement in the prosecution's version. This progressive naming of accused persons, including the addition of a new name in the 164 Cr.P.C. statements, strongly suggests that the identification is an afterthought and casts a profound shadow of doubt on the veracity of the implication.

8. This judicial observation is not made in a vacuum. It finds robust support in the authoritative dictum of the Supreme Court of Pakistan in Syed Saeed Muhammad Shah & others Vs the State (1993 SCMR 550), which clearly mandates that "Statements recorded by the police after delay and without explanation are to be ruled out of consideration." The principles elucidated in 2006 MLD 235, 2008 SCMR 1556, and 1996 SCMR 511 further reinforce the legal position that unexplained delays and material contradictions in the prosecution's narrative warrant a finding of "further inquiry" within the meaning of Section 497(2) Cr.P.C. When such grave inconsistencies manifest at the nascent stages of the proceedings, the likelihood of conviction becomes uncertain, compelling the court to examine whether there are reasonable grounds to believe the accused has committed a non-bailable offense. In the present

scenario, the glaring contradictions surrounding the identification of the applicants clearly fall within the realm of "further inquiry."

9. Furthermore, the applicants are stated to be residents of the same area as the complainant, which significantly mitigates any apprehension that they might abscond or attempt to obstruct the course of justice by tampering with evidence or influencing witnesses. Their continued incarceration, under circumstances where their direct involvement is subject to substantial doubt and requires further judicial scrutiny, would be unjust and serve no expedient purpose. The ultimate determination of guilt or innocence remains the prerogative of the trial court, to be decided after a complete and fair trial where all evidence is adduced and thoroughly scrutinized. However, at this stage, the facts and circumstances overwhelmingly indicate that a case for bail on the ground of "further inquiry" has been firmly established. Therefore, this Court is satisfied that the applicants have made out a compelling case for the grant of bail. Accordingly, applicants, Anwar Ali and Bangul Khan, are admitted to post-arrest bail, subject to furnishing solvent surety in the sum of Rs. 500,000/- (Rupees Five Lacs only) each, and PR bond in the like amount to the satisfaction of the learned trial court. The above assessments are tentative in nature and shall not affect the merits of trial.

**JUDGE**

Asghar Altaf/P.A