

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT, MIRPURKHAS
Criminal Misc. Application No.S-169 of 2025
(Sadam Hussain vs ArbabAli and another)

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1. For order on M.A No.1443/2025.
- 2. For order on office objection.
- 3. For order on M.A No.1444/2025.
- 4. For hearing of main case.

ORDER
30.07.2025

Mr. Sirai Raheem Khaskheli, Advocate for the applicant.
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- 1. Urgency granted.
- 2. Deferred.
- 3. Deferred.
- 4. Through this Criminal Miscellaneous Application under Section 497(5), Cr.P.C., the applicant, being the complainant, assails the order dated 16.07.2025 passed by the learned Sessions Judge, Umerkot, whereby the bail application under Section 497, Cr.P.C., filed by Respondent No.1, Arbab Ali (the accused), was allowed.

The prosecution’s case, as set forth in the FIR, is that the applicant/ complainant lodged FIR No. 15/2025 at Police Station Chhore for offences punishable under Section 302, PPC. The FIR was registered on 28.05.2025, while the date of the incident is mentioned as 26.05.2025 at an unspecified time during the night. According to the FIR, on 25.05.2025, after sunset, the complainant along with Ghulam Shabir (son of Nabi Bux) went to the cattle farm, where they served dinner to Nabi Bux (uncle of the complainant), provided him with a cot to sleep on, and thereafter returned home. On the following morning, i.e., 26.05.2025 at around 8:00 A.M., the complainant and Ghulam Shabir returned to the cattle farm while taking breakfast, where they discovered the dead body of Nabi Bux lying on the wooden cot. The complainant immediately informed his cousin Essa and other relatives via phone call, who arrived at the scene and observed that the deceased had sustained multiple bullet injuries on various parts of his body. The complainant party then informed the police. Upon reaching the scene, the police also observed and followed the footprints of three individuals in the sand, which

eventually disappeared approximately two kilometers away. After completing the necessary legal formalities, the Chhore Police shifted the body of the deceased to District Headquarters Hospital (DHQH), Umerkot, where a postmortem examination was conducted. Subsequently, the body was brought to village Khet Singh, where the funeral rites were performed. Thereafter, the complainant approached the police station and lodged a FIR, alleging that due to personal enmity, three unknown persons had killed Nabi Bux by firing at him with pistols. The FIR was initially lodged against unknown persons. During the course of investigation, one Muhammad Usman was arrested by the police. In his confessional statement, he disclosed the name of Respondent No.1, Arbab Ali, and implicated him in the commission of the offence. On the basis of this disclosure, the police arrested Arbab Ali, who subsequently filed a post-arrest bail application. The said bail application was allowed by the learned Sessions Judge, Umerkot, through order dated 16.07.2025, which is now under challenge through the instant Criminal Miscellaneous Application filed under Section 497(5), Cr.P.C.

Learned counsel for the applicant submits that the learned trial Court granted post-arrest bail to the respondent without properly appreciating the facts available on record. It is contended that the confessional statement of co-accused Muhammad Usman, recorded under Section 164, Cr.P.C, specifically involved and implicated Respondent No.1, namely Arbab Ali, in the commission of the offence. Learned counsel further submits that the trial Court granted bail in undue haste, without affording sufficient time for thorough scrutiny of the material collected during investigation. Therefore, Respondent No.1 is not entitled to the concession of bail.

Heard, arguments of the learned counsel for the parties and perused the material available on record with due care and caution.

According to the prosecution's narrative, the name of Respondent No.1 does not find mention in the FIR, which was lodged against unknown persons, and the incident was un-witnessed. The primary material relied upon by the prosecution to implicate Respondent No.1 is the confessional statement of co-accused Muhammad Usman, recorded under Section 164, Cr.P.C. A careful examination of the said statement reveals that while Muhammad Usman confessed his own involvement in the commission of the murder, he did not attribute any overt act or participation in the murder to Respondent No.1. The only role assigned to Respondent No.1 is that he allegedly provided shelter as

being harboured to Muhammad Usman after the commission of the offence. Mere sheltering of an accused after the commission of the offence, without any substantive material connecting him to the principal act, is not sufficient ground to withhold or cancel bail. In this context, reliance is placed upon the case of ***Abdul Majid Afridi vs The State and another (2022 SCMR 676)***, wherein it has been held that:

7.The statement of one accused in "isolation" does not advance the prosecution case except at the most it is a statement of a co-accused. We have noticed that there is nothing on the record where the prosecution has advanced its case qua conspiracy in any manner except the bald allegation which is incorporated in the FIR without citing any witness of the said aspect of the case. The statement of one of the assailants recorded under section 164, Cr.P.C. in all fairness is a statement of co-accused, hence, no deviation can be made against the established principle of law that statement of one accused cannot be used against the other in absence of any attending material produced by the prosecution. Reliance is placed on Nouman Khan v. The State (2020 SCMR 666) and Muhammad Sarfraz Ansari v. The State (PLD 2021 SC 738).

It is a settled principle that once bail has been granted by a competent Court of Law, it cannot be cancelled in a routine manner unless strong and exceptional grounds are shown. In the present case, the applicant/complainant has not alleged or brought on record any material to show that Respondent No.1 has misused the concession of bail, interfered with the investigation, tampered with evidence, threatened any witness, or created any law and order situation. Mere dissatisfaction with the bail granting order or reiteration of allegations from the FIR without pointing out any post-bail misconduct is not sufficient to seek cancellation of bail under Section 497(5), Cr.P.C. As certain guidelines have been laid down by the Hon'ble Apex Court, as in the case of ***Saeedullah and 2 others vs. The State and another (2023 SCMR 1397)*** wherein it has been held that:

- "i) If the bail granting order is patently illegal, erroneous, factually incorrect and has resulted into miscarriage of justice.*
- ii) That the accused has misused the concession of bail in any manner.*
- iii) That accused has tried to hamper prosecution evidence by persuading/pressurizing prosecution witnesses.*
- iv) That there is likelihood of absconsion of the accused beyond the jurisdiction of court.*
- v) That the accused has attempted to interfere with the smooth course of investigation.*
- vi) That accused misused his liberty while indulging into similar offence.*
- vii) That some fresh facts and material has been collected during the course of investigation which tends to establish guilt of the accused."*

Thus, in view of the legal position and in absence of any cogent ground justifying interference with the bail already granted, no case for cancellation of bail is made out. The applicant has not been able to demonstrate that the impugned order suffers from any perversity or is in violation of any settled principle of law relating to the grant of bail, so as to warrant interference by this Court under Section 497(5), Cr.P.C. Reliance is placed upon the case of *Ahmed Shakeel Bhatti and others vs The State and others* (2023 SCMR 1), as it has been held that:

9. The scope of interference to be made against the grant of bail by this Court in its appellate jurisdiction is well settled and hardly needs reiteration. Cancellation of orders granting bail are ordinarily resorted to by the Court on two grounds: (i) when the impugned order is perverse on the face of it or (ii) when the impugned order has been made in clear disregard of some principle of the law of bail. A perverse order is one that has been passed against the weight of the material on the record or by ignoring such material or without applying the relevant legal criteria or without giving reasons. Such an order is also termed as arbitrary, whimsical and capricious. None of these grounds for cancellation of bail are attracted in the present case. Consequently, we are not inclined to interfere in the impugned order of the High Court. Accordingly, leave to appeal is declined in Criminal Petition No.1197-L of 2021, and it is dismissed.

In view of the foregoing reasons, the instant Criminal Miscellaneous Application is found to be without merit and is accordingly dismissed in limine.

JUDGE

Adnan Ashraf Nizamani