

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Before:

Mr. Justice Khalid Hussain Shahani

Mr. Justice Muhammad Jaffer Raza

Cr. Bail Application No.D-26 of 2025

Applicants : 1. Shabir s/o Kashmir Jatoi
2. Arbab s/o Unar Jatoi
Through Mr. Abdul Rehman Bhutto,
Advocate

Respondent : The State
Through Mr. Ali Anwar Kandhro,
Additional Prosecutor General, Sindh.

Date of hearing : 15-07-2025
Date of Judgment : 29.07.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. – The applicants, Shabir and Arbab, seek post-arrest bail in a case bearing crime No. 110/2022, offence under Sections 302, 148, 149, 337H(ii) PPC & 6/7 ATA, registered at P.S Stuart Ganj. Their earlier post-arrest bail application was dismissed by the learned Special Judge, Anti-Terrorism Court, Shikarpur, vide order dated 25.03.2025.

2. As per the FIR lodged by complainant Syed Jameel Ahmed Shah on 05.09.2022, it is alleged that on 04.09.2022 at about 06:30 pm, the applicants along with other co-accused, came armed with deadly weapons to the complainant's house. They confronted his 85-year-old father, Syed Nabi Shah, blaming his son, SHO Syed Toufique Ahmed Shah, for the death of Ali Murad and injury to Daim Jatoi in a prior police encounter. It is specifically alleged that accused Shabir fired a pistol shot on Syed Nabi Shah's left cheek, and accused Arbab fired on his groin, among other injuries inflicted by co-accused, leading to Syed Nabi Shah's death. The accused then allegedly fired in the air to create terror before fleeing.

3. The learned counsel for the applicants argued that the applicants have been falsely implicated. Crucially, he submitted that the complainant and the eye-witnesses have sworn their affidavits before the learned trial court, unequivocally exonerating the applicants/accused from the commission of the offence. This, he contended, creates a situation of a "double version" in the prosecution's own case: one set forth in the FIR and the other emerging from the sworn evidence of the very witnesses. He emphasized that it is a settled principle of law that when two versions of a case emerge, the one supporting the accused is to be taken into consideration at the bail stage. The learned counsel further highlighted that co-accused Muhammad Khan @ Baboo has already been acquitted by the learned Anti-Terrorism Court vide judgment dated 20.04.2023. He stressed that the same witnesses who have now sworn affidavits exonerating the present applicants had also exonerated the co-accused Muhammad Khan @ Baboo from the alleged offence. Therefore, the applicants deserve the same treatment and benefits at this bail stage.

4. Conversely, the learned DPG for the State opposed the bail application, contending that the applicants are nominated in the FIR, and the charges are of a heinous nature, including murder and sections of the Anti-Terrorism Act, which fall within the prohibitory clause of Section 497 Cr.P.C. and 21-D(2) of the Anti-Terrorism Act 1997. He also pointed out their previous abscondence and that forensic reports had supported the complainant's version.

5. I have heard the arguments of the learned counsel for both parties and have carefully perused the record, including the FIR and the previous rejection order.

6. While it is undeniable that the offences under Sections 302 PPC and 6/7 ATA are of a heinous nature and fall within the prohibitory clause of Section 497 Cr.P.C. and the Anti-Terrorism Act,

the peculiar circumstances of this case warrant a deeper examination at the bail stage. The most compelling aspect of the applicants' contention is the filing of affidavits by the complainant and eye-witnesses exonerating the applicants. This creates a significant doubt regarding the true facts of the case. When the prosecution's own witnesses deviate from the FIR's initial version, effectively creating two contradictory narratives, the principle of "further inquiry" under Section 497(2) Cr.P.C. becomes highly relevant. At this juncture, it is yet to be determined at the time of trial which version is correct, the initial FIR or the subsequent sworn statements of the very witnesses. It is a well-established principle in criminal jurisprudence that if there are two plausible versions of an incident, the one favorable to the accused must be considered at the bail stage.

7. Furthermore, the learned counsel's reliance on the acquittal of co-accused Muhammad Khan @ Baboo on 20.04.2023 is highly persuasive. It is critical to note that the acquittal was reportedly based on the same witnesses having exonerated him. If the veracity of these witnesses' statements led to the acquittal of a co-accused, then the applicants, who are now benefiting from similar statements from the same witnesses, are entitled to similar treatment and benefits, at least at this bail stage. This raises a strong inference that the prosecution case against the present applicants, in light of these subsequent statements, is also one that requires further inquiry.

8. While the previous order noted the applicants' abscondence, the subsequent development of the complainant and witnesses exonerating them fundamentally alters the *prima facie* assessment of their involvement. Their flight from justice, while a serious consideration, must now be viewed in the context of the evolving evidence, which casts significant doubt on their direct culpability as initially portrayed. The forensic evidence indicating death and crime empties establishes that an incident occurred, but

with the material witnesses retracting their accusations against the specific accused, the direct link and their specific roles become a matter of "further inquiry."

9. In view of the above discussion, particularly the fact that the complainant and eye-witnesses have sworn affidavits exonerating the applicants from the commission of the offence, thus creating two conflicting versions of the prosecution case, and considering the acquittal of co-accused Muhammad Khan @ Baboo on similar grounds, the prosecution case against the present applicants becomes one of "further inquiry." It is a settled law that where two versions are available, the one supporting the accused is taken into consideration for the purpose of bail. Therefore, the applicants are entitled to the concession of bail.

10. Consequently, the instant bail application is allowed. The applicants, Shabir and Arbab, are admitted to post-arrest bail, subject to furnishing a solvent surety in the sum of Rs.200,000/- (Rupees Two Lacs Only) each with one surety in the like amount to the satisfaction of the learned Trial Court.

J U D G E

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Asghar Altaf/P.A