IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Bail Application No. S-361 of 2025
Cr. Bail Application No.S-354 of 2025

Applicant (In Cr. B.A No.S-361/2025)	:	Mazhar Ali s/o Muhammad Mosa Jatoi, t*hrough* Mr. Sher Ali Chandio, Advocate.
Applicants (In Cr. B.A No.S-354/2025)	:	1. Zaid s/o Ghulam Shabeer 2. Hamid s/o Haji Anwar 3. Maroof s/o Muhammad Hassan t*hrough* Mr. Sher Ali Chandio, Advocate.
Complainant	:	Sanaullah *through* Mr. Abdul Khaliq Bughio, Advocate
The State	:	*through* Mr. Aitbar Ali Bullo, Deputy Prosecutor General
Date of Hearing	:	13.08.2025.
Date of Order	:	13.08.2025.

O R D E R

Ali Haider 'Ada':J . By this single order, I intend to dispose of Bail Application No. S-361/2025, filed by applicant Mazhar Ali, which is a pre-arrest bail application, as well as Bail Application No. S-354/2025, filed by applicants Zaid, Hamid, and Maroof, who seek post-arrest bail, As both applications arise out of Crime No. 206/2025 registered at Police Station Mehar, for offences punishable under Sections 324, 504, 114, 147, 148, 149, 506(2), 337-A(i), 337-F(i), and 337-H(ii), PPC. Prior to approaching this Court, the applicants had moved their applications to the Sessions Judge, Dadu, who entrusted the matter to the learned Additional Sessions Judge-I, Mehar, where their bail applications were dismissed.

2. The brief facts of the prosecution case, as narrated in FIR No. 206/2025, are that on 18.06.2025, at about 05:30 a.m., the complainant, along with his relatives Sameer and Mohsin Ali, was present in his house when all the accused persons namely Muhammad Hassan (empty-handed), Maroof (applicant) armed with a hatchet, Zaid (applicant) armed with a repeater, Ghulam Ali armed with a hatchet, Waheed (empty-handed), Mazhar (applicant) armed with a repeater, Muslim armed with a pistol, Subhan armed with a hatchet, and Hamid (applicant) armed with an SBBL gun—allegedly trespassed into the house. On the instigation of Muhammad

Hassan and Waheed, accused Hamid and Mazhar allegedly caught hold of witness Sameer, whereupon Maroof struck him with a hatchet on his left elbow and Mazhar delivered a butt blow of a repeater to his head. It is further alleged that Mazhar and Hamid also caused injuries to the complainant, while Zaid struck Mohsin Ali with the butt of a repeater on his chest. Thereafter, the accused party allegedly resorted to aerial firing and fled. Following issuance of a referral letter for medical treatment by the concerned police station, the present FIR was lodged on 18-06-2025 at about 14:30 hours (2:30 pm).

3. Learned counsel for the applicants contends that there is no mala fide on the part of the applicant party. He submits that, as per the FIR, the matter arises out of a family dispute. It is further argued that several co-accused, namely Muhammad Hassan, Ghulam Ali, Waheed, Muslim, Subhan, and Asghar, have already been granted bail, which they continue to enjoy, and neither the prosecution nor the complainant has moved for its cancellation to date. Learned counsel adds that the role attributed to the present applicants does not fall within the prohibitory clause. In particular, the allegation against applicant Maroof attracts Section 337-F(vi) PPC, which also does not fall under the prohibitory clause. In support of his arguments, he has placed reliance on *PLD 2017 SC 730* (Khalil Ahmed Soomro and others v. The State).

4. Conversely, learned counsel for the complainant submits that specific allegations have been levelled against all the applicants, including causing injuries to multiple witnesses. He emphasizes that accused Hamid and Mazhar allegedly caught hold of injured Sameer, who sustained serious injuries. He further argues that recovery was also effected from some of the accused. In these circumstances, according to him, the applicants are not entitled to the concession of either pre-arrest or post-arrest bail. He relies upon *2022 P.Cr.L.J Note 111* (Muneer Hussain v. The State) and *2019 P.Cr.L.J Note 93* (Riyasat Ali v. Ghulam Haider and others).

5. Learned Deputy Prosecutor General adopts a similar stance, submitting that recovery was effected from the applicants, thus disentitling them to the relief sought. However, with regard to Section 324 PPC, he submits that it pertains to the offence of attempting to commit murder, but

in the present case, although certain applicants were allegedly armed with a repeater and an SBBL gun, they did not use them in a manner attracting the ingredients of Section 324 PPC. He maintains that whether such ingredients are ultimately established will depend upon the evidence adduced at trial.

6. Heard the arguments of the learned counsel for the parties and the learned Deputy Prosecutor General, and perused the material available on record under judicial scrutiny.

7. The record reflects that the FIR was lodged on 18-06-2025 at 1430 hours (02:30 pm.), whereas the alleged incident took place earlier the same day at 0530 hours. The police station is situated approximately 6-7 kilometers away from the place of occurrence. It is noteworthy that, despite approaching the concerned police station and obtaining a letter for medical treatment, the complainant party did not record their version of the alleged incident before the police in full detail at that time. Reliance is placed upon the case of ***Mazhar Ali v. The State and another*** **(2025 SCMR 318),** on account of delay in FIR.

8. It further transpires that the statements of the witnesses were recorded on 20.06.2025 under Section 161, Cr.P.C, and thereby reflecting delay on the part of the prosecution, for which no plausible explanation has been offered. Reliance is placed upon the case of ***Abdul Malik v. The State*** **(2025 YLR 1029),** wherein it was held that:

> *11.The tentative assessment of available record prim-facie reflects that what role has been played in the commission of crime is a fact, which will be ascertained after recording evidence from both the sides, and the status of statements under Section 161 Cr.P.C. recorded by the witnesses after considerable long delay, will also be determined at the time of delivering of final judgment, till then the case of present applicant falls within the ambit of further inquiry and the learned counsel for the applicant (accused) has succeeded in making out a case for grant of bail in favour of the applicant (accused).*

9. As, regards the explanation that the complainant party are alleged to be injured, it is observed that most of the injuries sustained fall within the category of bailable offences, except the one attracting Section 337-F(vi), PPC. In this context, guidance may be taken from the case of ***Muhammad Akhtar v. The State*** **(Criminal Petition No. 310 of 2025),** wherein the

Hon'ble Supreme Court, vide order dated 17.04.2025, was pleased to grant bail to the accused on the ground that the alleged offence did not fall within the prohibitory clause of Section 497, Cr.P.C., despite the specific reference to Section 337-F(vi), PPC, in the allegations.

10. The question of mere recovery does not entitle the prosecution to decline the relief, particularly when the section shown as heinous in nature such as Section 324 PPC is not attracted as per tentative assessment. Even otherwise, the applicants Zaid, Hamid, and Maroof were arrested on 19-06-2025, whereas the alleged recovery was shown to have been effected on 24-06-2025. In this context, reliance is placed upon the case of ***Syed Qurban Ali Shah and another vs The State*** **2025 YLR 246,** as held that:

> *11. Taking into account the bail plea raised in the cases concerning the production of the crime weapons, it is noted that following their arrest, the accused expressed willingness during interrogation to produce the weapons used in the commission of the aforementioned offense. However, despite this knowledge, the police failed to associate mashirs of recovery from the local community, except for the mashirs closely associated with the complainant, who are not residents of the locality where the alleged recovery was made. This recovery was documented under a joint memo.) indicating that both accused had produced unlicensed pistols. It is significant to note that the FIR in Crime No. 3/2024 does not mention whether the 30-bore pistol allegedly produced by applicant Syed Qurban Ali Shah was unlicensed. While it is acknowledged that the maximum punishment provided for the offense under section 25 of the Sindh Arms Act, 2013, is imprisonment for up to ten years, discretion is vested with the trial court by the legislature, as held by this Court in the case of "Dilawar v. The State" (2023 PCr.LJ 1684), which reveals as under:*
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> *8. The applicant is confined in judicial custody since the day of his arrest and police has submitted the challan against him; hence he is not required for further investigation. Despite prior information, daylight and roadside, police failed to join any private person to witness the search and recovery process. Record is also silent as to whether applicant is a habitual or previous convict, All the witnesses are police officials; therefore, there is no apprehension of tampering with the prosecution evidence. The case of the applicant is pending for adjudicating into his guilt before the trial Court. The discretion is however left open with the trial Court by the legislature either to award maximum punishment of ten years imprisonment to the applicant or to award lesser punishment keeping in view the surrounding circumstances commensurate with the nature of the case. The Court while hearing bail application does not have to keep in view the maximum sentence provided by statute but the one which is likely to be entailed in the facts and circumstances of the case. Therefore, keeping in view the facts and circumstances of the case, prima facie, case against the applicant requires further enquiry as contemplated under subsection (2) of section 497, Cr.P.C. Accordingly, the applicant is entitled to be released on bail."*

11. It is further noted that such recovery was shown to have been voluntarily disclosed by the accused during interrogation. At this juncture, it would be relevant to refer to Article 40 of the Qanun-e-Shahadat Order, 1984, which provides as under:

> ***"40. How much of information received from accused may be proved.*** *When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved".*

12. To bring a case within the ambit of Article 40 of the Qanun-e-Shahadat Order, 1984, the prosecution must establish that the accused, while in police custody, provided some information or made a statement to the police which directly led to the discovery of a new fact connected with the offence something the police were not already aware of. Such information or statement must also be put into writing. If no such statement or information exists, then the mere act of recovery cannot be treated as falling under Article 40. As in the present case, such a statement is conspicuously missing, which further weakens the prosecution's stance at this stage. In this Context, reliance is placed on the case of ***Zafar Ali Abbasi and another v. Zafar Ali Abbasi and others*** **(2024 SCMR 1773),** wherein it was held that:

> *5. In order to bring the case within the ambit of Article 40 of the Qanun-e-Shahadat Order, 1984, the prosecution must prove that a person accused of any offence, in custody of police officer, has conveyed an information or made a statement to the police, leading to discover of new fact concerning the offence, which is not in the prior knowledge of the police. Such information or statement should be in writing and in presence of witnesses. In absence of information or statement from a person, accused of an offence in custody of police officer, discovery of fact alone, would not bring the case of the prosecution under the said Article. According to the prosecution, a dagger used in the commission of the offence was recovered on the disclosure and pointation of the appellant. Surprisingly, the I.O. did not record the information received from the appellant in writing, in presence of a witness, while he was in police*

13. In bail matters, Courts don't conduct a deep trial. The test is whether the material creates reasonable grounds of guilt or the case calls for further inquiry under s.497(2) Cr.P.C. If there is doubt or two plausible views, the presumption of innocence and benefit of doubt favour the accused even at

bail stage. Reliance is placed upon the case of ***Resham Khan and another vs The State*** **2021 SCMR 2011.**

14. In view of the foregoing circumstances, the bail application of the applicant Mazhar Ali**,** seeking pre-arrest bail, is hereby confirmed on the same terms and conditions as stipulated at the time of grant of his interim bail. As regards the bail application of applicants Zaid, Hamid, and Maroof, who seek post-arrest bail, the same is allowed**,** and they are admitted to post-arrest bail subject to furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand only) each, along with personal bonds in the like amount, to the satisfaction of the learned trial Court. Consequently, the bail applications stand disposed of in the above terms.

J U D G E

Asghar Altaf/P.A