

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. S-108 of 2025

Applicants : 1) Dillan s/o Bahadur,
2) Moula Bux s/o Dillan,
Through Mr. Shah Muhammad Bango,
Advocate

Complainant : Despite service of notice, absent.

The State : Mr. Muhammad Raza Katohar, DPG

Date of hearing : 25.08.2025
Date of order : 25.08.2025

KHALID HUSSAIN SHAHANI J: Applicants Dillan and Moula Bux seek confirmation of interim bail earlier granted by this Court on 10.02.2025 in a case bearing crime No.102/2024 of P.S Khuhra for offences under Sections 302, 120-B, 114, 147, 148, 149 PPC.

2. The above FIR was lodged on 25.08.2024 by complainant Rajib Ali, alleging that during the night time quarrel, his brother Aamir Ali was murdered by co-accused Bashir on instigation of applicant Dillan while applicant Moula Bux allegedly resorted to ineffective aerial firing. Police after investigation submitted challan. The applicants initially approached the learned Sessions Court but their bail was dismissed on 21.01.2025. Thereafter, they approached this Court, were admitted to interim pre-arrest bail on 10.02.2025.

3. On 20.02.2025, complainant appeared and sought time for engaging counsel, but thereafter he remained absent despite repeated notices of Court. Co-accused Ghulam Asghar, involved in the same crime, has already been admitted to bail post-arrest by this Court vide order dated 17.02.2025.

4. Learned counsel for applicants has, while opening his arguments, drawn attention to the material facts of the case which reveal that three parallel FIRs, i.e. Nos.102, 103 and 104 of 2024, were registered over one and the same

incident which occurred between Bhatti and Joyo communities, in which on both sides men lost their lives. In such contentious circumstances, it was his submission, the question as to who was the aggressor and who was the aggrieved is squarely a matter to be thrashed out after trial, and thus prima facie the case calls for further inquiry. He further urged that there is an admitted delay of nearly ten hours in the registration of the FIR which prima facie suggests deliberation and consultation, particularly when the complainant admits that ceremonies of burial were completed before moving to the police station. Counsel further contended that no role of effective firing upon deceased Aamir Ali is attributed to either of the applicants; rather the sole fatal fire was attributed to co-accused Bashir Ahmed, while applicants are arrayed on allegations of mere instigation or aerial firing which in itself is a weak type of corroborative role. It was also pointed out that during investigation the I.O. found co-accused Deedar Ali, against whom similar role was alleged, as innocent and placed his name in column No.2, and another co-accused Ghulam Asghar has already been admitted to post-arrest bail by this very Court on 17.02.2025. In these circumstances the case of applicants, being on a better footing as compared to those who already stand favored with the concession of bail, squarely attracts the well-settled consistency rule. He referred to authoritative precedents of the Hon'ble Supreme Court including the case of Tariq Bashir v. The State reported in PLD 1995 SC 34 and the recent dictum of the apex Court in Muhammad Tanveer v. The State reported in 2017 SCMR 733 wherein it was held that when co-accused assigned identical or graver role stand admitted to bail, then to deny bail to another on weaker footing would amount to gross inconsistency and discriminatory approach which law abhors. Reliance was also placed on Zahid Hussain v. The State PLD 2021 SC 173 where the august Court reiterated that "principle of consistency in bail matters

has come to acquire sanctity, for departure from such rule itself amounts to arbitrariness.”

5. Conversely, learned Deputy Prosecutor General Mr. Muhammad Raza Katohar opposed confirmation of interim pre-arrest bail arguing that both applicants are specifically nominated in the FIR; Dilan is assigned role of instigation and Moula Bux of aerial firing in furtherance of common object to facilitate the principal accused Bashir who fired the fatal shot. According to him, delay in lodging the FIR stood properly explained as the complainant had first taken steps for post-mortem as well as burial, while the ocular account is consistent with medical evidence. It was further pressed that the offence is heinous, punishable with death, therefore falls within prohibitory clause of section 497 Cr.P.C, and this alone should warrant rejection of bail

6. I have heard the parties and carefully scanned the available record. It is now an admitted position that the complainant after initial appearance has failed to contest the matter despite repeated notices, which reflects lack of interest to pursue. More significantly, the role ascribed to present applicants is certainly distinguishable from that of co-accused Bashir who allegedly fired with KK on the deceased; they are attributed only with instigation or aerial firing without any firearm injury being connected with them. The police too had let off co-accused Deedar Ali on identical role by placing his name in column No.2 of the report under section 173 Cr.P.C, and this very Court has admitted another co-accused Ghulam Asghar to bail post-arrest. Once a co-accused having allegedly a similar or even stronger role has been treated with leniency and admitted to bail, by force of judicial discipline and the principle of parity, the applicants too cannot be treated differently lest it results in denial of uniform justice.

7. The Hon’ble Supreme Court in a long line of cases including Tariq Bashir (PLD 1995 SC 34), Muhammad Tanveer (2017 SCMR 733), Zahid

Hussain (PLD 2021 SC 173) and more recently in Hilal Khattak v. The State (2023 SCMR 1182) has held that consistency is itself a cardinal principle of criminal law, and once a co-accused stands admitted to bail, the same relief cannot be denied to another similarly placed unless distinguishable features are shown. Nothing of the sort has been brought to my notice to disentitle the present applicants. On the contrary the cross-version FIRs, unexplained delay, interested witnesses, weak identification evidence at night, and absence of recovery or independent corroboration, all together render the matter one of further inquiry within the purview of section 497(2) Cr.P.C.

8. It is also a settled principle as recognized in Naseer Ahmed v. The State PLD 1997 SC 347 that at the stage of bail the Court must make no deeper appreciation of evidence but only a tentative assessment, and any genuine doubt must tilt in favor of liberty. Pre-arrest bail, though extraordinary, is meant to shield individuals from motivated humiliation and mala fide arrests. In absence of any demonstrated mala fide, and given that the applicants have already remained on interim bail and have not misused their liberty or attempted to abscond, no justification remains to recall such concession at this stage.

9. In view of the foregoing discussion, fortified by the ratio *decidendi* laid down by the Hon'ble Supreme Court on the rule of consistency and tentative assessment at bail stage, the interim pre-arrest bail granted to applicants Dilan and Moula Bux on 10.02.2025 is hereby confirmed on same terms and conditions. The observations made above are tentative in nature and will not influence the learned trial Court at the time of trial.

JUDGE