

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S-467 of 2025

Applicants : 1. Yaseen s/o Abdul Raheem Kalhoro
2. Javed son of Manzoor, Kalhoro
Through Mr. Humayun Shaikh, Advocate

The State : Through Mr. Muhammad Raza Katohar,
Deputy Prosecutor General

Dated of Hearing : 03.09.2025
Dated of order : 03.09.2025

ORDER

KHALID HUSSAIN SHAHANI, J:— Applicants, Yaseen and Javed, seek post-arrest bail in a case bearing crime No. 87 of 2024, for offences under Sections 114, 302, 148, 149 and 337-H(ii) PPC, registered at Police Station Baiji Sharif. Their earlier application before the learned Additional Sessions Judge/Model Criminal Trial Court-I, Sukkur, was dismissed vide order dated 22.04.2025.

2. The facts of the case, as narrated in the FIR, are that on 02.10.2024, at about 2:00 p.m., the complainant Abid Hussain along with his brothers, namely Asif Ali, Saddam, and Shahzado (deceased), was present at a timber godown situated at Chonga Link Road. At that moment, a number of accused persons, thirteen in total, duly armed with lethal weapons, arrived at the spot. The FIR attributes the fatal shot to accused Ghulam Hussain, who, on the instigation of his co-accused Khadim Hussain, fired upon Shahzado, hitting him on the ear and resulting in his instant death. The remaining accused, including the present applicants, are alleged to have resorted to aerial firing before leaving the scene when co-villagers gathered. The complainant transported the body of the deceased to the hospital and, after the funeral rites, lodged FIR the following day.

3. Learned counsel appearing on behalf of the applicants has argued that the applicants have been falsely implicated due to longstanding enmity

between the parties. It has been pointed out that the applicants are witnesses in FIR No. 66 of 2023 registered at Police Station Sangi, where close relatives of the present complainant have been nominated in a murder and terrorism case under Sections 302, 324, 365-A, 452, 120-B, 114, 427, 354, 109, 148, 149 PPC read with Section 7 of the Anti-Terrorism Act, 1997. Counsel emphasizes that naming the applicants in the instant case is nothing but retaliatory implication. It has further been submitted that the allegations leveled against the present applicants are vague and general in nature, as no specific role has been attributed to them of causing the fatal injury; instead, the fatal act has been attributed solely to co-accused Ghulam Hussain. The role of the present applicants stands confined only to indiscriminate aerial firing, which does not carry the same weight as the allegation against the principal accused. Counsel has further stressed that the witnesses cited by the prosecution are all related to the complainant and therefore, constitute interested witnesses whose testimony should be scrutinized with the utmost caution even at the bail stage. Another significant point raised is the delay of one day in lodging the FIR, which remains unexplained and thus strongly suggests deliberation and consultation prior to nomination of the accused. It has been lastly argued that since the police have already submitted the challan, the applicants' continued incarceration serves no investigative purpose. On the strength of these submissions, learned counsel prayed for grant of post-arrest bail.

4. Conversely, the learned Deputy Prosecutor General representing the State opposed the bail. According to him, the applicants are specifically named in the FIR as armed members of the assailant party, who facilitated and supported the commission of offence. He contended that the notion of mere "aerial firing" cannot absolve them at this stage because their participation in an unlawful assembly armed with deadly weapons prima facie renders them liable under Sections 149 and 114 PPC for sharing common object. It was argued that

the statements of eyewitnesses recorded under Section 161 Cr.P.C. corroborate the complainant's version and sufficiently connect the applicants with the crime. It was emphasized that the allegations relate to a brutal murder committed in broad daylight in the presence of witnesses and that the applicants, being part of the unlawful assembly, are equally culpable. The learned DPG, therefore prayed for dismissal of the application.

5. After hearing both sides and perusal of the record, it is admitted that the sole specific allegation of causing the fatal firearm injury is directed against co-accused Ghulam Hussain, whilst the other accused, including the present applicants, have been implicated on account of general allegations of indiscriminate aerial firing. The consistent judicial view, as laid down by the Honourable Supreme Court in *Tariq Bashir v. The State (PLD 1995 SC 34)* and reiterated in *Zahid Hussain v. The State (1996 SCMR 1245)*, is that when allegations are omnibus in nature and do not assign a specific overt act of murder, the case falls within scope of "further inquiry" in terms of Section 497(2) Cr.P.C. Furthermore, the plea of false implication advanced by the defence finds tentative support from the record, as placed before this Court in the form of FIR No.66 of 2023 registered at Police Station Sangi and another FIR No.42 of 2024 registered at Police Station Baiji Sharif, in which relatives of the complainant are nominated. This background lends weight to the contention of strained relations and reciprocal enmity, thus making it believable that the applicants could have been arrayed with mala fides.

6. It is also of paramount importance to observe that the FIR was not lodged forthwith but with an unexplained delay of one day. The Honourable Supreme Court in *Mst. Sughran Bibi v. The State (2018 SCMR 595)* and in *Ashfaq Hussain v. The State (2021 SCMR 1087)* has consistently held that unexplained delay in lodging of a crime report leads to an inference of deliberation and afterthought, undermining the prosecution version at bail stage.

Additionally, the case has been challaned and custody of the applicants is no longer required for investigative purposes. In this respect, reliance may again be placed on the dictum of the apex Court in Tariq Bashir (supra), which emphasized that once investigation is complete and accused are no longer required by the police, the presumption tilts toward grant of bail, particularly where the case is arguable and calls for further inquiry.

7. In view of the above, and considering the cumulative factors of general allegations against the applicants, prior enmity providing basis for possible false implication, unexplained delay in lodging FIR, and factum of challan having been submitted, I am of the tentative opinion that the case of the applicants squarely falls within ambit of further inquiry, attracting Section 497(2) Cr.P.C. Resultantly, the applicants, Yaseen and Javed, are admitted to post-arrest bail subject to their furnishing solvent surety in the sum of Rs.5,00,000/- (Five Hundred Thousand Rupees) each and P.R. bonds in the like amount to the satisfaction of the learned trial Court.

8. It is clarified that observations made herein are tentative and shall not bind or prejudice the trial Court at the time of final adjudication of the case, which shall be decided independently in light of the evidence brought before it.

J U D G E