

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S-538 of 2025

Applicant : Azhar Ali son of Mazhar Ali, by caste Behleem,
Through Mr. Abdul Sattar Mahesar Advocate

Complainant : Munawar Ali s/o Shehzado Behleem
Through. Abdul Raheem Mahar, Advocate

The State Through Mr. Muhammad Raza Katohar, DPG

Date of hearing : 03.09.2025
Dated of order : 11.09.2025

ORDER

KHALID HUSSAIN SHAHANI, J.— The applicant Azhar Ali seeks confirmation of ad-interim pre-arrest bail which had been granted by this Court on 26.06.2025 in relation to FIR No.01/2025, for offences under sections 324, 452, 114, 337-H(ii), 147, 148, and 149 PPC, registered at Police Station Tepani Behleem, District Khairpur.

2. The facts, as narrated in the FIR, are that on 22.03.2025 at about 9:45 P.M, complainant Munawar Ali alleged that accused Bashir Ahmed, Azhar Ali (the applicant), Sadam, Ghazi Khan, Arshad, Soomar, Imran and two unidentified persons armed with deadly weapons in furtherance of their common intention entered into the complainant's house. It was stated that on the instigation of Bashir Ahmed, the present applicant fired upon Mazhar Ali hitting him on his left thigh, and co-accused Sadam made a fire shot which struck Mazhar's left index finger. On cries being raised, co-villagers rushed to the spot, whereupon the accused fled away. The injured was taken to the police station and thereafter to the hospital, with the FIR ultimately being lodged two days later on 24.03.2025.

3. Learned counsel for the applicant has submitted that the case against applicant is false and motivated by enmity. He emphasized that there

is clear inconsistency between the ocular account and the medical record. The provisional medico-legal certificate dated 22.03.2025 recorded a punctured wound on the thigh and a deep lacerated wound on the index finger. However, the final medico-legal certificate dated 23.03.2025 initially attributed the thigh injury to a hard and blunt substance, which was subsequently overwritten by hand to suggest a firearm injury. The injury to the finger continues to be described as having been caused by a blunt weapon. This tampering, according to counsel, significantly erodes the value of the medical corroboration and brings the prosecution story under serious doubt.

4. The learned counsel further argued that both injuries are on non-vital parts of the body, with no allegation of repetition of fire or close-range targeting. The statutory ingredient of intention to commit qatl-i-amd under section 324 PPC is therefore not made out. It has also been contended that there was a delay of nearly two days in lodging the FIR. According to learned counsel, this unexplained delay gives rise to strong presumption of deliberation and consultation, particularly when the parties are admittedly on inimical terms. Reference in this regard was made to *Muhammad Asif v. The State (2017 SCMR 486)*, where the Supreme Court observed:

“A delay in setting the law into motion, when not reasonably explained, is always looked upon with suspicion because it affords opportunity for deliberation and consultation for falsely roping in innocent persons.”

5. The learned counsel also pointed out that the applicant has on earlier occasions been implicated in previous FIRs by the same complainant party, showing a pattern of malicious implication. He submitted that since the

challan has already been submitted, the custodial arrest of the applicant will serve no useful purpose.

6. Conversely, the learned Deputy Prosecutor General Sindh, assisted by complainant's counsel, submitted that the FIR specifically attributes to the applicant the role of firing at the injured's thigh, a direct and specific allegation which disentitles him to the discretionary relief of pre-arrest bail. He further argued that the applicant is not a first-time offender but has a criminal history, having been nominated in a prior murder case under section 302 PPC, which demonstrates his dangerous proclivity. Learned DPG also justified the two days delay in lodging FIR, arguing that the injured had to first be moved for treatment and that minor delay in such circumstances is adequately explained. In support, he referred to *Muhammad Rafique v. The State (2019 SCMR 1068)*, wherein the Hon'ble Supreme Court held that:

“When the injured or his companions are first concerned with saving human life by shifting the injured to hospital and obtaining medical treatment, slight delays in lodging of the FIR are understandable and not fatal to the prosecution case.”

7. After hearing arguments and examining the record, it is evident that although the applicant is named in the FIR with an attributed role, there exists serious inconsistency between the ocular version and medical record. Initially the injury on the thigh was opined to be of blunt weapon. Subsequently, overwriting introduced the word 'firearm'. Such tampering weakens the confidence with which medical evidence can be used in support of ocular testimony. In *Muhammad Mansha v. The State (2018 SCMR 772)* the Honourable Supreme Court cautioned:

“Where the ocular testimony is in direct conflict with the medical evidence, and the prosecution offers no satisfactory explanation, such inconsistency strikes at the root of the prosecution case and creates doubt, benefit of which must necessarily go to the accused.”

8. Furthermore, the location of the alleged injuries, i.e. thigh and index finger, being non-vital parts, and the absence of repeated fire, prima facie dilute the prosecution’s claim of intent to commit qatl-i-amd. The principle has been summarized in *Tariq Bashir and 5 others v. The State (PLD 1995 SC 34)*, wherein the Supreme Court propounded the settled rule:

“Grant of bail in offences not falling within the prohibitory clause of section 497 Cr.P.C. is a rule and refusal an exception. The Courts should lean in favour of granting bail in such offences unless circumstances are extraordinary and exceptional.”

9. In the present case, keeping in view the disputed medical evidence, the nature of injuries, the admitted enmity between the parties, the delay in lodging of FIR, and the fact that the challan has already been submitted and the applicant is not required for further investigation, the case of the applicant clearly falls within the ambit of further inquiry under section 497(2), Cr.P.C. It is well settled that at the bail stage only tentative assessment of material is to be undertaken.

10. Consequently, the ad-interim pre-arrest bail granted to the applicant Azhar Ali on 26.06.2025 is confirmed on the same terms and conditions, with a direction to attend and join the trial proceedings. The observations made herein are tentative in nature and shall not prejudice the trial court in its determination on merits.

JUDGE