

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Application No. S-292 of 2025

Cr. Bail Application No. S-293 of 2025

Cr. Bail Application No. S-300 of 2025

Cr. Bail Application No. S-346 of 2025

Cr. Bail Application No. S-347 of 2025

Cr. Bail Application No. S-356 of 2025

Applicants : 1. Sajid Hussain s/o Nazimuddin, Kalwar
2. Abdul Sattar s/o Gul Hassan, Kalwar
3. Nasrullah s/o Muhammad Dawood, Kalwar
4. Abdul Rafique s/o Gul Hassan, Kalwar
5. Zameer Ahmed s/o Abdul Fattah, Kalwar
6. Farzand Ali s/o Bahadur Ali, Kalwar
7. Bashir Ahmed s/o Muhammad Dawood
8. Mumtaz Ali s/o Muhammad Dawood
9. Nzimuddin s/o Raham Ali, Kalwar
10. Bashir Ahmed s/o Raham Ali, Kalwar
11. Aftab Ali s/o Sawan, Kalwar
12. Munawar Hussain s/o Dad Muhammad
13. Jahanzaib s/o Wali Muhammad, Kalwar

Through M/s Sohail Ahmed Khoso and
Mazhar Hussain Kalwar, Advocates

Complainant : Allah Dino through Mr. Israr Ahmed Shah,
Advocate

The State : Through Mr. Muhammad Raza Katohar, DPG

Dated of hearing : 08.09.2025

Date of decision : 15.09.2025

ORDER

KHAID HUSSAIN SHAHANI, J- This consolidated order dispose of six criminal bail applications filed by the applicants Sajid Hussain, Abdul Sattar, Nasrullah, Abdul Rafique, Zameer Ahmed, Farzand Ali, Bashir Ahmed, Mumtaz Ali, Nzimuddin, Bashir Ahmed, Aftab Ali, Munawar Hussain, and Jahanzaib, all accused in same case bearing crime No.37 of 2025, for offences

u/s 302, 324, 147, 148, 149, 109, 337-H(ii), and 504 PPC, registered at Police Station Baiji Sharif. Previously, their bail petitions were declined by the Additional Sessions Judge-IV Sukkur, vide orders dated 07.04.2025, 10.04.2025, 26.04.2025 and 29.04.2025, respectively.

2. The prosecution's case, as narrated in the FIR lodged by complainant Allah Dino, involves a fatal incident on 05.04.2025, where accused Munawar Ali Kalwar allegedly murdered the complainant's maternal cousin Ali Khan. The complainant party had demanded a resolution "faisla" which the accused party refused and allegedly threatened the complainant and his relatives. On the morning of the incident near the house of Khan Muhammad, several accused, armed with firearms, emerged and threatened to kill the complainant party. Co-accused Sajjad Ali reportedly fired at the complainant's son-in-law Ali Khan, causing fatal injuries. Other accused including Nazim Ali, Aftab Ahmed, and Bashir Ahmed reportedly fired at different members of the complainant party causing injuries to non-fatal parts. Injured were taken to Taluka Hospital Pano Akil, where Ali Khan died. Consequent upon; case was registered inter alia on above facts.

3. Counsel for the applicants argued that the applicants are innocent and falsely implicated due to admitted enmity reflected in the FIR itself. They contended that the main accusation of murder is against co-accused Sajjad Ali who is not among the applicants. Medical reports show injuries on non-vital parts exceeding to "ghayr-jaifah damiyah" and "ghayr-jaifah mutalahimah" injuries punishable under sections 337-F(i) and 337-F(iii), PPC, which do not fall within the prohibitory clause of section 497(1), Cr.P.C., thus entitling the applicants to bail as per settled law. Furthermore, the ingredients of section 324, PPC, which requires repeated firing or clear intent to commit murder, are argued absent, and the element of *mens rea* to commit murder cannot be presumed at this bail stage. The only allegation against some applicants is

aerial firing, which also does not attract serious penal consequences under the provisions invoked. Applicant Munawar Ali, a medical professional by qualification, is denied specific involvement or conspiracy. Previous FIR No. 06/2025 lodged by a brother of accused Aftab Ahmed against the complainant party presented this FIR as a counterblast. The counsel for the applicants relied on several leading Supreme Court and High Court decisions to support the case for bail, specifically in scenarios involving admitted enmity, counterblast FIRs, and injuries not falling under the prohibitory clause of section 497(1) Cr.P.C. They relied upon reported case *Jamaluddin & another Vs. The State* (2023 SCMR 1243), which elucidates the principle that in cases where the injuries sustained are "ghayr-jaifah damiyah" or of a nature that carries lesser penalties, and where the elements of the more serious charges (such as repeated firing or clear intent of murder under Section 324 PPC) are missing or doubtful on the face of the FIR and initial evidence, refusal of bail is not automatic. The Court emphasized bail as a rule in cases falling outside the prohibitory clause, especially when the allegations are prima facie contentious due to enmity or counterblast. Similarly, *Saeed Ullah and 2 others Vs. The State another* (2023 SCMR 1397) highlights procedural safeguards in pre-arrest bail cases, underscoring that when there is a possibility of false implication due to hostile relations and the FIR does not discharge the burden on the prosecution conclusively at the bail stage, the benefit of doubt goes to the accused. This case further reinforces that bail is to be granted liberally when the offence is non-prohibitory or the evidence is not firm on criminal intent. Likewise, *Ubaidullah Vs. The State* (2021 MLD 1720) discusses the granting pre-arrest bail directly in exceptional circumstances, most notably where the life or liberty of an accused is imperiled due to malafide prosecution or orchestrated false accusations. It supports the principle that bail jurisdiction is a protective mechanism and refusal must be the exception not the rule,

particularly in cases with disputed facts and no incontrovertible evidence on record at the bail stage. The case of *Khair Muhammad Vs. The State* (2004 YLR 1598) features a detailed analysis of criminal procedure and the scope of judicial discretion in bail matters, guiding courts to balance the investigation's integrity against the accused's right to personal liberty, with emphasis on medical evidence and injury reports as key indicators of offence gravity relevant to bail.

4. Conversely, the learned Deputy Prosecutor General and counsel for the complainant argued that the FIR, lodged promptly with material particulars, names each applicant with distinct allegations and roles. They stressed the doctrine of common intention under section 149 PPC making each accused vicariously liable for the acts of co-assailants. Ocular testimony and medical evidence allegedly support the prosecution's narrative. They relied upon the case of *Ahtisham Ali Vs. The State* (2023 SCMR 975), which reinforces that in serious offences involving injury or death, bail should not be the default and interim indulgence should be withheld unless the facts are clearly in favour of the accused or the prosecution case is manifestly weak. It stresses that the presence of clear roles assigned in the FIR and corroborated ocular testimony counsel against bail at pre-arrest stage. The case of *Syed Hamad Raza Vs. The State* (2022 SCMR 640) holds that when the accused are shown by evidence or from the FIR narrative to be active participants or demonstrable assailants with weapons used in the commission of offences, courts should be cautious in releasing them on bail. The principle of vicarious liability and common intention under sections 34, 109 and 149 PPC applies, making the entire group liable. Likewise, *Sidra Abbas Vs. The State and another* (2020 SCMR 2089) reinforces that where the prosecution allege use of firearms causing grievous injuries or death, and the FIR is lodged promptly with specific roles mapped to accused persons, the bar under section 497

Cr.P.C. applies, limiting bail grant to exceptional cases only. The Court further found that mens rea can be inferred from the circumstances and thus bail refusal may be justified on prima facie evidence. The case of *Mukhtiar Hussain alias Mukhtiar Ahmed* (2024 YLR 1404), *Nazar Hussain & another Vs. The State* (2012 P.Cr.L.J 345), *Rana Muhammad Safdar Vs. Gulzar Ali alias Papoo* (1999 P.Cr.L.J 01), and *Ramzan and another The State* (2011 MLD 1436) further cement the principle that allegations involving use of firearms, fatal injuries, and conspiracy with common intention require strong circumspection in granting bail due to the danger of tampering with evidence or influencing witnesses.

5. There is admitted hostile relationship between the parties, evident from the FIR itself and the antecedent FIR No. 06 of 2025, registered against the complainant party by a relative of one accused, involving offences under sections 324, 337-H(2), 427, 148, and 149 PPC. This indicated a possible reciprocal or retaliatory nature of the present FIR, where the prospect of false implication cannot be ruled out at this prima facie stage.

6. Regarding the medical aspect, the injuries sustained by applicants Nazimuddin, Abdul Fatah, and Bashir Ahmed are on non-vital parts and classified as “ghayr-jaifah damiyah” and “ghayr-jaifah mutalahimah,” punishable under sections 337-F(i) and 337-F(iii), PPC with maximum sentences of one and three years, respectively, and do not attract the bar of the prohibitory clause of section 497(1), Cr.P.C. The FIR lacked clarity on repeated firing or clear intention to commit murder as required under section 324, PPC, rendering its applicability doubtful at this preliminary stage, to be conclusively decided by the trial court.

7. Further, for the applicants only accused of aerial firing, the elements of section 337-N(2), PPC, including previous convictions or characteristics such as habituality, dangerousness, or commission under *karo*

kari or *siyahkari* contexts as stipulated by the Supreme Court, were absent. There is no evidence that the applicants abused any previously granted interim bail. The settled principle in criminal jurisprudence, as reaffirmed by the Supreme Court, is that bail is the rule and refusal is the exception in cases outside the prohibitory clause. This detailed reasoning reflects a balanced exercise of judicial discretion on bail in serious offences, weighing the prosecution's evidence, medical reports, the nature and severity of injuries, enmity between parties as a factor in possible false implication, and the settled principles of criminal jurisprudence, citing binding Supreme Court precedents and statutory provisions, in line with the fundamental right of accused to pre-arrest bail unless barred under section 497(1), Cr.P.C. Considering these facts, *prima facie* the applicants have succeeded to make out case for bail. Accordingly, interim pre arrest bail already granted to the applicants is confirmed on same terms and conditions with directions to join investigation/trial.

7. The observations made above are tentative and do not prejudice the trial court's final adjudication after evidence is recorded. The office is directed to place a signed copy of the order in the connected matters.

J U D G E