

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S-1073 of 2025

Applicant : Moula Bux s/o Khuda Bux, Laghari,
Through Mr. Mehtab Ahmed Baloch, Advocate
The State : Through Mr. Shafi Muhammad Mahar, DPG
Date of hearing : 11.12.2025
Date of Order : 11.12.2025

ORDER

KHALID HUSSAIN SHAHANI, J.– Applicant, Moula Bux Laghari, seeks the concession of pre-arrest bail in case bearing crime No.185 of 2025, for offences under Sections 452, 337-A(i), 337-F(i), 337-F(v), 504, 147, 148 and 149 PPC, registered at Police Station Mirwah, District Khairpur. His earlier plea for pre-arrest bail was declined by the learned Additional Sessions Judge, Mirwah, vide order dated 28.10.2025, hence this application.

2. As per the FIR lodged on 26.06.2025 by complainant Mst. Robina, the complainant party and the accused party are next-door neighbours and there exists between them a dispute over a house and an adjoining plot. It is alleged that for some time prior to the occurrence the accused had been pressurizing the complainant to vacate her house and hand over both the house and the plot to them, and to shift from the locality. On her refusal, accused persons allegedly became annoyed, threatened that they would “*teach them a lesson*”, and repeatedly extended criminal intimidation.

3. On 12.03.2025, at about 8:45 p.m., the complainant, her son Mohsin, daughter Shaila, and other family members were present in their house when, according to the FIR, accused Khuda Bux and Dilshad, armed with pistols; accused Dana Ali and Jan Muhammad, armed with hatchets; and accused Moula Bux (present applicant), Shaman @ Imam Bux, and Habibullah @ K-2, armed with lathis, forcibly entered the complainant’s house. They allegedly started abusing and threatening the complainant party, reiterating that despite repeated demands the complainant had not handed over the house and plot to them and that they would not spare them that day.

4. It is further alleged that during the incident accused Khuda Bux caused a pistol-butt blow to the left arm/elbow of complainant's son; accused Dilshad caused a pistol-butt blow to Mohsin on his wrist; the present applicant, Moula Bux, caused lathi blows to the complainant on her right arm and other parts of the body; accused Shaman gave a *lathi* blow to Shaila on her left arm; accused Jan Muhammad caused a hatchet-handle blow to Shaila on her left wrist; accused Habibullah caused a *lathi* blow to the complainant on her face; accused Dana Ali caused a hatchet-handle blow to her nose; and other accused persons also allegedly caused *lathi* blows to her left hand and different parts of the body. On the cries raised by the complainant party, their relatives Wali Muhammad and Himath Ali, along with other neighbours, are said to have rushed to the spot, whereupon the accused allegedly fled away, while still issuing threats.

5. The injured were then taken to the police station, from where they obtained a letter for their medical examination and treatment. After receiving medical treatment, the complainant claims to have approached the notables of the locality for amicable settlement. The notables allegedly assured her that they would talk to the accused persons, but, according to her, the accused never joined talks, kept them on false hopes, and ultimately refused reconciliation. Thereafter, the complainant lodged the present FIR on 26.06.2025, i.e., more than three months after the alleged occurrence.

6. Mr. Baloch, learned counsel for the applicant mainly contended that the applicant has been falsely implicated due to an admitted property dispute between the parties. He argued that practically the entire male branch of the applicant's family, including his sons and real brothers, has been roped in, which, on the face of it, reflects mala fide and over-implication. Counsel submitted that a counter-version from the applicants' side already stands recorded in the shape of FIR No.191 of 2025 at the same police station arising out of the very same occurrence, in which the complainant party has been nominated as aggressors. In such a situation of admitted enmity and cross-cases, it is yet to be determined at

trial as to which side was the aggressor and which side was acting in self-defence, if at all. Learned counsel further emphasized the inordinate and unexplained delay of more than three months in lodging the FIR. According to him, the incident allegedly occurred on 12.03.2025, whereas the FIR was lodged on 26.06.2025. Such delay, it was argued, provides sufficient time for deliberation, consultation, improvements and fabrication of a false story, which seriously dents the credibility of the prosecution version. The explanation tendered by the complainant regarding medical treatment and approach to notables was argued to be an afterthought and not plausible for such a long delay in a case of alleged house-trespass coupled with hurt. It was also urged that all the cited witnesses are close relatives of the complainant and no independent witness from the neighbourhood has been examined to lend assurance to the prosecution story, despite the allegation that several neighbours had arrived at the scene on hearing the commotion. The absence of independent corroboration, in a case arising out of a bitter neighbourhood/property dispute, was pressed as a strong circumstance in favour of further inquiry. Learned counsel next pointed to an apparent conflict between the ocular account and the medical evidence. As per the FIR, the applicant is stated to have caused *lathi* blows to the complainant on her right arm and other parts of the body; however, the medico-legal certificate on record, according to counsel, attributes the relevant injury to the left arm of the complainant. Such inconsistency between the site of the injury as narrated in the FIR and as recorded in the medical evidence, he submitted, *prima facie* corrodes the certainty of the specific role ascribed to the applicant and can only be resolved after recording of evidence at trial. It was argued that the injuries attributed to the applicant fall under Section 337-F(v) PPC (*Ghayr-Jaifah-Hashimah*) and related provisions, which carry a maximum sentence of five years and therefore do not attract the prohibitory clause of Section 497(1) Cr.P.C. In this context, learned counsel placed reliance on the settled principle that where the offence does not fall within the prohibitory

clause, grant of bail is to be considered favourably, subject of course to other attending circumstances. Learned counsel further submitted that co-accused Khuda Bux, Dilshad, Dana Ali, Shaman and Habib-ur-Rehman, against whom more serious and specific roles with respect to the causing of injuries on the face, nose and vital parts have been assigned, have already been admitted to bail by the trial Court. On the rule of consistency, he argued, the present applicant, whose attributed role is at best of causing lathi blows on non-vital parts, stands on an equal or even a better footing and is thus entitled to similar treatment. It was also urged that investigation has been completed, the challan has been submitted before the trial Court, and the alleged weapon of offence (*lathi*) is of a simple nature, the recovery of which, in any event, would not materially advance the prosecution case. The applicant has remained on interim pre-arrest bail since 06.11.2025, has regularly attended the Court, has joined the investigation, and there is no allegation from the prosecution that he has misused the concession of bail, tried to abscond, or attempted to influence or intimidate any witness. In these circumstances, learned counsel contended that the case of the applicant at the very least falls within the purview of further inquiry as envisaged by Section 497(2) Cr.P.C., and, taken together with the apparent mala fide in his nomination, he is entitled to confirmation of pre-arrest bail.

07. Conversely, learned Deputy Prosecutor General opposed the confirmation of interim pre-arrest bail. He submitted that the applicant is specifically named in the FIR with a clear and distinct role of causing lathi blows to the complainant, and that the injuries sustained by the complainant are duly supported by the medico-legal certificate. The learned DPG further contended that one of the injuries falls within the definition of *Ghayr-Jaifah-Hashimah* under Section 337-F(v) PPC, which is a serious and non-bailable offence and reflects the gravity of the occurrence. He argued that the delay in lodging the FIR stands sufficiently explained, keeping in view that the injured required medical treatment and that efforts were made through community notables to resolve the

dispute, which ultimately failed, whereafter the FIR was registered. It was also pointed out that the alleged weapons with which the injuries were caused have yet to be recovered from some of the accused, and for this purpose, custody of the accused, including the applicant, may still be necessary. Learned DPG submitted that mere existence of enmity between the parties does not by itself show false implication; rather, such enmity can equally provide a motive for commission of the offence. He maintained that there are no exceptional or extraordinary circumstances in the present case to warrant the grant of the extraordinary relief of pre-arrest bail, particularly when the allegations involve house-trespass and causing of hurt to women inside their home.

08. Heard and perused the record. It is by now a well-settled principle of law that pre-arrest bail is an extraordinary and discretionary relief, to be granted sparingly and only in cases where not only a tentative view on the merits favours the accused, but there are also circumstances indicating that the proposed arrest is actuated by mala fide, ulterior motives, or is intended to cause humiliation rather than to secure the ends of justice. The burden to establish such circumstances lies on the accused seeking pre-arrest bail.

09. In the instant case, certain features of the prosecution case, when viewed tentatively at this stage, create doubt and bring the matter within the ambit of further inquiry. *Firstly*, it is admitted on both sides that there exists a property dispute between the parties relating to the house and plot forming the scene of the occurrence. This admitted background of enmity, by itself, does not exonerate the accused, but it does make the Court cautious in assessing the possibility of exaggeration or over-implication. The FIR nominates, inter alia, the present applicant along with his sons and real brothers, assigning them roles with similar weapons (*lathis*) and general allegations of participation. Such “sweeping nomination” of almost the entire male branch of one family, in the backdrop of a pre-existing property dispute and admitted enmity, raises a reasonable inference at this stage that the complainant may have attempted to involve all adversaries

in order to exert pressure, which is a relevant circumstance while considering pre-arrest bail.

10. *Secondly*, a cross-version from the accused side has already culminated in FIR No.191 of 2025, arising out of the same transaction. The existence of a counter-case inter se the parties on the same occurrence indicates that both sides allege aggression against each other. In such a situation, without recording of evidence, it is difficult to conclusively determine which party, if any, was the initial aggressor. This, again, brings the matter within the scope of further inquiry as to the true genesis of the incident and as to the truthfulness of either version.

11. *Thirdly*, the aspect of delay in lodging the FIR cannot be lightly brushed aside. The incident is alleged to have occurred on 12.03.2025, whereas the FIR was lodged on 26.06.2025, i.e., after more than three months. While the complainant has attempted to justify this delay on the grounds of medical treatment of the injured and efforts at reconciliation through notables, such explanation, at least at the bail stage, does not appear to fully account for such an unusually long delay in a case involving alleged house-trespass, use of firearms and hatchets, and causing of multiple injuries to women and other family members inside their house. The law requires prompt reporting of serious offences to minimize the possibility of deliberation and embellishment. This long delay, therefore, prima facie casts a shadow on the spontaneity of the prosecution version and supports the applicant's plea that the matter may have been deliberated upon before registration of the FIR.

12. *Fourthly*, there appears to be some discrepancy between the ocular account and the medical evidence regarding the specific injury attributed to the applicant. The FIR attributes to the applicant the causing of lathi blows on the right arm and other parts of the body of the complainant, whereas the MLC reflects the relevant injury on the left arm. Whether this discrepancy is due to a slip, mis-description, or otherwise, is ultimately a matter for the trial Court to

determine after recording evidence. However, at this stage, such inconsistency does introduce doubt regarding the precision of the role assigned to the applicant and further supports the contention that the case is one of further inquiry.

13. *Fifthly*, the nature of the offence attributed to the applicant is also material. The injury attributed to him is categorized as *Ghayr-Jaifah-Hashimah* under Section 337-F(v) PPC, punishable with imprisonment which may extend to five years. The maximum sentence provided does not bring the matter within the prohibitory clause of Section 497(1) Cr.P.C. It is now trite law that where the offence does not fall within the prohibitory clause, grant of bail is to be considered as a rule and refusal as an exception, unless there are extraordinary circumstances justifying such refusal.

14. Another relevant consideration is the rule of consistency. Co-accused, namely, Khuda Bux, Dilshad, Dana Ali, Shaman and Habib-ur-Rehman, against whom more specific and arguably graver roles in respect of causing injuries on the face, nose and other sensitive parts have been alleged, have already been admitted to bail by the trial Court. The role of the present applicant, as per the record, does not appear to be more serious than that of the said co-accused. Denial of bail to the applicant, in the face of bail granted to co-accused with comparatively similar or even more serious roles, would offend the principle of consistency in the administration of criminal justice.

15. The conduct of the applicant during the period of interim pre-arrest bail is also a material factor. The applicant has remained on interim pre-arrest bail since 06.11.2025. During this period, he has not been reported to have absconded, misused the concession of bail, or attempted to tamper with prosecution evidence or influence witnesses. He has joined investigation and the challan has already been submitted. In such circumstances, his continued incarceration, or custodial arrest at this stage, would serve no useful purpose other than to expose him to humiliation, which is not the object of arrest.

16. The plea of the prosecution that recovery of the weapon (*lathi*) is still pending does not carry much weight in the context of a simple wooden stick which is easily available and not a unique or distinctive article. The alleged weapon is of such a nature that its recovery, at this stage, would be more of a formality than a substantive investigative requirement. Therefore, this ground alone cannot justify refusal of pre-arrest bail.

17. Taken cumulatively, the admitted background of property dispute and enmity, the sweeping implication of multiple close family members, the existence of a counter-FIR for the same incident, the significant delay in lodging the FIR, the apparent discrepancy between the ocular account and medical evidence as to the injury attributed to the applicant, the non-applicability of the prohibitory clause, the grant of bail to co-accused on the same set of facts, and the applicant's conduct while on interim bail, all tilt the balance in favour of the applicant for the limited purpose of pre-arrest bail. These features *prima facie* create reasonable doubt regarding the correctness of the prosecution story and, at the least, bring the case within the ambit of "further inquiry" contemplated by Section 497(2) Cr.P.C.

18. In the backdrop of the above circumstances, an inference of mala fide or ulterior motive in the proposed arrest of the applicant also cannot be ruled out at this tentative stage, particularly in view of the manner in which the entire family branch has been implicated and the fact that the parties are admittedly litigating over property and have lodged cross-cases against each other.

19. It must be reiterated that at the stage of deciding a bail application, the Court is required to make only a tentative assessment of the material on record without embarking upon a deeper or conclusive appraisal of the evidence, which squarely falls within the domain of the trial Court. Any observations made herein are therefore strictly tentative and confined to the question of grant or refusal of pre-arrest bail.

20. In view of the discussion made above, the applicant has succeeded, for the purposes of pre-arrest bail, in making out a case falling within the ambit of further inquiry under Section 497(2) Cr.P.C., coupled with circumstances indicative of possible mala fide in his arrest. Consequently, the interim pre-arrest bail earlier granted to the applicant vide order dated 06.11.2025 is hereby confirmed on the same terms and conditions.

21. It is clarified that the observations contained in this order are tentative in nature and shall not prejudice the case of either party nor shall they influence the learned trial Court, which shall decide the case strictly on the basis of evidence that may be adduced before it.

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