

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. S-887-of 2025

Applicants : 1. Muhammad Hussain son of Belo  
2. Allah Dad son of Muhammad Hussain  
3. Shaman Ali son of Muhammad Hussain  
All by caste Shar  
*Through* Mr. Mumtaz Ali Naich, Advocate

Complainant : Mst. Shahzadi w/o Abdul Hameed, Shar  
*Through* Mr. Mushtaque Ahmed Shahani,  
Advocate

The State : *Through* Mr. Muhammad Raza Katohar, DPG

Date of Hearing : 03.11.2025  
Date of Order : 13.11.2025

## ORDER

**KHALID HUSSAIN SHAHANI, J.—** Applicants named above seek pre arrest bail in a case bearing crime No.11/2025, for offences under Sections 302, 114, 504, 337-H(2), 147, 148, 149 PPC of PS Khenju, District Ghotki. Prior to this their bail was declined by the court of learned Additional Sessions Judge Daharki vide order dated 09.09.2025.

2. As per the contents of FIR lodged on 24<sup>th</sup> July 2025 at 07:30 hours, the complainant Mst. Shahzadi, alleged that she had previously lodged FIR No.09/2025 under Sections 337-A(i), 504, 114, 147, 148 PPC at Police Station Khenju against Mubarak Shar and others on account of a dispute pertaining to a pathway. Due to this earlier FIR and the consequent animosity, the accused Muhammad Hussain and his associates remained annoyed and used to make threats that they would commit the murder of the complainant party and cause them harm. On 23<sup>rd</sup> July 2025, at about 06:20 hours in the morning, the complainant along with her brother-in-law Akbar Shar and Obhayo Shar (both sons of Mohammad Qasim) and her nephew Rashid son of Rano Shar were working in the agricultural land of Ghulam Mustafa Mahar situated near Village Belo Shar. At that time, an armed group of nine persons came to the location with criminal intent. The complainant identified each of them as Muhammad Hussain

alias Hussain, Mubarak, Arbab, Amanullah, Bahadur, Allah Dad, Shaman, Asif, and Qurban being armed with lethal weapons. Upon their arrival, they raised hue and cry. Meanwhile, accused Mubarak Shar instigated the others to commit murder. Acting upon this instigation, accused Muhammad Hussain fired from his gun at the complainant's nephew, Rashid Shar, which hit him on the head. Upon being shot, Rashid fell to the ground, crying out in pain. Simultaneously, the other accused persons assaulted and abused the complainant party with severe words and obscenities. The accused, armed with firearms and hatchets, also made aerial firing for purposes of causing harassment and intimidation to the complainant party, after which they escaped to their respective houses. After the accused fled, the complainant party observed that Rashid Shar had sustained a serious firearm injury on his head and was trembling and weakening. The complainant party immediately informed the police and rushed the injured Rashid towards Daharki. From there, Rashid was referred for advanced medical treatment to District Headquarters Hospital (DHQ) Sukkur. However, during transit to Sukkur, the injured Rashid succumbed to his injuries. The dead body was subsequently brought to Taluka Hospital Daharki for legal formalities including postmortem examination. After the completion of the postmortem and other legal procedures, case was registered *inter alia* on above facts.

3. Mr. Naich, learned counsel appearing on behalf of the applicants, advanced the submissions that accused are innocent and have been falsely implicated in the present case due to an existing admitted enmity between the parties as reflected in FIR No.09/2025. He contended that the very genesis of animosity arising from a pathways dispute has created fertile ground for malafide implication of the applicants. The counsel stressed that there was an unjustified and unexplained delay of about 24 hours in the lodging of the FIR. While the complainant claims that the delay was occasioned by attending to the injured and funeral rites, the learned counsel argued that such delay casts a serious and reasonable doubt upon the veracity and authenticity of the prosecution's case and

story. He emphasized that such considerable delay demonstrates deliberation, consultation, and forethought on the part of the complainant in fabricating the case and implicating the applicants. The learned advocate further argued that the specific criminal role of firing the fatal shot is attributed solely to Muhammad Hussain, while the other two applicants, Allah Dad and Shaman Ali, are alleged to have merely been present at the place of occurrence armed with hatchets, with no specific overt act attributed to them. The counsel submitted that the mere presence of persons at the scene of occurrence and the sharing of alleged common intention cannot justify their detention at the bail stage. Such matters require deeper inquiry and thorough examination during trial, and therefore the applicants should be extended the bail relief at this premature stage. The learned counsel emphasized that the Investigation Officer himself found the applicants to be innocent and accordingly placed their names in Column No.2 of the challan, thereby exonerating them from the serious allegations. This opinion of the Investigation Officer, according to the learned counsel, carries significant weight and demonstrates that after a thorough investigation, the I.O. found no credible evidence to sustain charges against the applicants. The counsel argued that the I.O's professional assessment is a clear indication of the weakness of the prosecution case against the applicants. Moreover, the learned Advocate submitted that the case presents multiple, contradictory, and conflicting versions of the events. Firstly, there is the version narrated by the complainant in her FIR. Secondly, there is the version emanating from the Investigation Officer, who has placed the applicants in Column No.2 of the challan, indicating his opinion that the applicants are not culpable. Thirdly, there is the version advanced by co-accused Arbab Shar, who has confessed his guilt through his statement made before the police. The learned counsel argued that co-accused Arbab's statement is corroborated by the report of the Forensic Science Laboratory (FSL) Larkana. He submitted that the fact that co-accused Arbab Shar confessed to the commission of the offence and his confession is substantiated by the forensic

report matching his weapon with one of the recovered empties clearly demonstrates that Arbab, not the present applicants, is the actual perpetrator of the murder. The learned counsel pointed out that during the investigation, the I.O recovered two empties from the place of occurrence, which have been marked as C-1 and C-3. These two empties have not been matched with any recovered weapon and are dissimilar according to the report of the ballistic expert. Subsequently, a third empty, marked as C-2, was recovered from the place of occurrence. This empty was matched with a Spin Browning 12 Bore (SBBL) shotgun recovered from co-accused Arbab Shar. Thus, only one empty (C-2) has been matched with Arbab's weapon, while the other two empties (C-1 and C-3) remain unmatched and dissimilar. This fact, according to the learned counsel, strongly suggests that there were multiple weapons used at the scene, and Arbab's weapon accounts for only one of the shots. The applicants cannot, therefore, be held responsible for the fatal shot when Arbab's weapon has already been implicated. The learned advocate further submitted that all the witnesses examined by the police under Section 161 Cr.P.C are close blood relatives of the complainant. These witnesses are Akbar Shar, Obhayo Shar, and Rashid Shar (the deceased), all of whom are family members of the complainant. Such closely interested witnesses cannot be relied upon to provide an objective and unbiased account of the occurrence. Their testimony is tainted by personal interest and familial bias in favor of the complainant. The counsel argued that mere bald assertions and allegations contained in a FIR, without independent corroboration from objective sources, are insufficient to prove the guilt of the applicants. A FIR is merely a first information report lodged by the complainant based on their version of events and contains only allegations that require substantiation through independent investigation and corroborating evidence. The bare FIR cannot be accepted as proof of guilt. The learned advocate further submitted that it is a general and well-known trend in the society to cast the net of blame and criminality widely to involve as many members as possible of the opposing party.

This tendency has manifested in the present case, wherein the complainant has implicated nine accused persons including the present applicants, despite the fact that the fatal shot is attributed only to Muhammad Hussain, while the others merely happened to be present. The counsel further argued that it is highly improbable and contrary to natural human conduct that a father, Muhammad Hussain, along with his two sons, Allah Dad and Shaman Ali, would jointly venture to commit a premeditated murder. Such a scenario strains credulity and goes against the ordinary course of human behavior and family dynamics. The learned advocate also submitted that the enmity between the parties is admitted and acknowledged in the FIR itself. This admitted enmity creates a strong suspicion of false implication of the applicants. The complainant party, being involved in a prior dispute with the applicants' family, has utilized the present serious occurrence to settle scores and exact revenge by implicating them in false charges. The learned counsel further argued that the right to liberty is a fundamental right of every individual and cannot be curtailed without proof of guilt. The applicants are presumed innocent unless and until they are convicted after a fair and full trial. Bail is intimately linked to and derivative of the fundamental right to liberty and the constitutional presumption of innocence. The burden of proving guilt rests upon the prosecution and not upon the accused. The learned advocate submitted that even on a tentative and preliminary assessment of the material available on record in the case of the prosecution, there are insufficient grounds to believe in the guilt of the applicants. The slightest dent or deficiency visible in the prosecution case, during such tentative assessment, would entitle the applicants to the grant of bail, even in cases where the alleged offence falls within the prohibitory clause of Section 497 Cr.P.C. The counsel further relied upon the golden principle of criminal jurisprudence and justice that it is always better to err in granting bail than to err in refusing it. The reason is obvious: if the court grants bail to a guilty person, the conviction and sentence upon his subsequent trial can provide reparation for the harm caused by the

mistaken relief. However, if the court refuses bail to an innocent person and such person spends years in prison during trial, and is subsequently acquitted, no sufficient or adequate reparation can be offered to compensate for the unjustified suffering and imprisonment endured during the trial. Thus, the principle favors the grant of bail. The learned advocate submitted that the case has been challaned and is currently pending for trial before the learned Additional Sessions Judge, Daharki. No useful purpose would be served by sending the innocent applicants behind bars during the investigation and trial process. The investigation has substantially progressed, and the applicants have already cooperated with the police. The counsel submitted that the applicants are law-abiding and respectable citizens of good repute in their community. They have not engaged in any criminal conduct, nor do they have criminal antecedents. The applicants are bonafide residents of their village and have deep roots in their community, making it highly unlikely that they would abscond from justice. The learned counsel further contended that in order to justify the denial of bail and the recall of pre-arrest bail, the prosecution should establish that the applicants pose a flight risk or that they are likely to abscond. There is no evidence whatsoever to suggest that the applicants have any intention to flee or to evade the legal process. The learned advocate further argued that the case requires further inquiry and deeper investigation into the actual guilt or innocence of the applicants. It is not a case where the evidence against the applicants is so overwhelming and conclusive as to admit of no other hypothesis. The case presents multiple versions and conflicting accounts which necessitate further probing. Lastly, the learned counsel prayed for confirmation of the interim pre-arrest bail granted to the applicants.

4. Mr. Bhatti, the learned counsel for the complainant along with the learned Deputy Prosecutor General for the State, Mr. Muhammad Raza Kaothar, jointly opposed the bail application and submitted that the applicants have been specifically and individually nominated in the FIR with clearly defined and

distinct roles. Accused Muhammad Hussain is specifically attributed with the commission of the fatal firearm injury inflicted upon Rashid Shar by firing his gun at Rashid's head at the instigation of Mubarak Shar. Accused Allah Dad and Shaman Ali are alleged to have been armed with hatchets and are charged with sharing the common object of murder with the other accused. Thus, the applicants are not mere bystanders or incidental persons present at the scene; rather, they are active participants in the unlawful assembly formed with the common object of committing murder. The learned DPG argued that the delay of 24 hours in the lodging of the FIR is not only explained but is satisfactorily explained in the circumstances of the case. The complainant party was compelled to rush the injured Rashid to the hospital for emergency medical treatment and attempted to save his life. When Rashid succumbed to his injuries while in transit, the complainant party had to attend to the postmortem examination of the deceased body, arrange for its custody, and perform the necessary funeral rites and ceremonies in accordance with Islamic law and traditions. These are natural and inevitable actions that any person would take upon the death of a close relative. The investigation officer's notes confirm that the complainant party attended to these formalities before approaching the police station. Such explanation renders the delay reasonable and non-suspicious. The learned advocate for the complainant submitted that the medical evidence provides strong corroboration of the prosecution case. The postmortem report confirms that Rashid Shar died from a firearm injury inflicted on his head. The Medical Officer's opinion clearly establishes the cause of death and the manner in which the fatal injury was sustained. This medical evidence directly supports the allegations made by the complainant in her FIR. The learned DPG further submitted that the prosecution case is supported by eyewitness testimony recorded under Section 161 Cr.P.C, documentary evidence in the form of the inquest report, the memo of examination of the dead body, and memos regarding the recovery of blood-stained earth and blood-stained clothes from the scene of occurrence. All these pieces of

corroborating evidence, when viewed collectively, lend substantial support to the prosecution version of the facts. The learned counsel further submitted that although the Investigation Officer placed the names of the applicants in Column No.2 of the challan, such opinion of the I.O is not binding upon the Court. In fact, the learned Civil Judge & Judicial Magistrate, Daharki, after a careful and thorough scrutiny of the entire record and the material collected during investigation, disagreed with the I.O's opinion. The learned Magistrate, in the exercise of independent judicial judgment, took cognizance against all the accused persons, including the present applicants, vide order dated 26th August 2025. This judicial determination by the Magistrate displaces and overrides the opinion of the I.O and clearly demonstrates that sufficient *prima facie* material exists against the applicants to warrant proceeding with the case against them. The learned DPG submitted that during the course of investigation, three spent cartridges were recovered from the place of occurrence under proper site memos and were marked as C-1, C-2, and C-3. These cartridges were sent to the Forensic Science Laboratory at Larkana for ballistic examination. The FSL report, vide its findings dated 1<sup>st</sup> August 2025, confirms that one empty cartridge marked as C-2 was fired from the Spin Browning 12 Bore (SBBL) shotgun recovered from co-accused Arbab Shar. However, the other two empties marked as C-1 and C-3 were not fired from Arbab's weapon and bore different ballistic characteristics. The fact that these other two empties were not matched with any recovered weapon does not in any way exonerate the present applicants. The recovery of multiple empties and the non-matching of some of them is not unusual in cases involving multiple assailants. It is quite possible that other weapons used by the other accused remain uncovered or unreported. The learned advocate submitted that the confessional statement made by co-accused Arbab before the police is admissible to the extent that it constitutes a statement under Section 161 Cr.P.C. However, the counsel emphasized that such statement by Arbab is not a judicial confession recorded under Section 164 Cr.P.C. before a Magistrate, and therefore



carries limited evidentiary value in a proceeding. Moreover, the fact that co-accused Arbab has confessed to his involvement does not, in any way, exclude the active and culpable participation of the present applicants in the commission of the murder. The ocular account provided by the eyewitnesses clearly attributes the fatal firearm shot to Muhammad Hussain and identifies Allah Dad and Shaman as active participants armed with hatchets, facilitating the murder. The confession of one co-accused cannot be used as an acquittal of another co-accused, particularly where, as in the present case, the eyewitness accounts clearly delineate the roles of each accused. The learned DPG submitted that the allegations involve the commission of a grave and heinous offence, namely, the premeditated murder of Rashid Shar. The manner and magnitude of the attack, wherein nine armed assailants appeared at the scene with a concerted plan and motive, clearly indicates a planned and premeditated crime. The use of multiple weapons, including firearms and sharp instruments (hatchets), the specific instigation by Mubarak Shar to "*commit murder*," and the coordinated action of all the accused in perpetrating violence against the complainant party all point to a calculated and deliberate design to commit the murder. Such gravity of the charge and the aggravated manner of commission of the offence clearly fall within the prohibitory clause of Section 497 Cr.P.C, making bail a rare and exceptional concession.

5. The learned advocate further argued that there is no evidence whatsoever to demonstrate that the applicants have joined or cooperated with the investigation. Rather, they have maintained a stance of denial and have set up defenses, including the plea of alibi, to deflect culpability. The learned DPG emphasized that the applicants have failed to establish any mala fide intention or ulterior motive on the part of the police or the complainant in implicating them. No malafide has been demonstrated or even suggested in the police investigation. The applicants have merely contested the charges without adducing any credible evidence of false implication or harassment by the investigating authorities. The

learned counsel submitted that the investigation is still in progress, and the weapons allegedly used by the present applicants in commission of the offence have not yet been recovered during the investigation. This fact renders further detention of the applicants necessary for purposes of custodial interrogation and investigation. The applicants may provide information regarding the weapons used by them and the manner in which they were disposed of. In conclusion, the learned DPG prayed for dismissal of the bail application and submitted that the applicants are not entitled to the extraordinary concession of pre-arrest bail. The learned counsel relied upon the judgments reported as (2023 SCMR 1724), (2021 SCMR 449), (2021 YLR 338), (2016 P.Cr.L.J Note 66), (2010 SCMR 1171), (2012 P.Cr.L.J 345), and (SBLR 2020 Sindh 1687).

6. Upon careful review and deliberation, it is manifest from the record that specific and distinct criminal roles have been assigned to Muhammad Hussain, Allah Dad, and Shaman Ali. The role attributed to Muhammad Hussain is singular and distinct, as he is alleged to have fired the fatal shot at the deceased, Rashid Shar, which makes him privy to the main act of qatl-i-amd. In contrast, the only allegation against Allah Dad and Shaman Ali is their mere presence at the crime scene, being armed with hatchets but not inflicting any injury nor committing any overt act in furtherance of the offence. The investigation officer has placed the names of Allah Dad and Shaman Ali in column No. 2 of the challan, which underscores the absence of substantive evidence as to their participation in the principal act of murder.

7. The Hon'ble Supreme Court of Pakistan, in the precedents reported as 2017 SCMR 279 (*Qurban Ali v. The State*) and 2024 P.Cr.L.J 343(*Jamshair v. The State*), has held that mere presence of an accused at the scene does not by itself constitute criminal liability unless an overt act is attributed. The principle stands settled that for Section 34, PPC to apply, there must be active participation or facilitation; otherwise, mere presence precludes the offence and entitles the accused to bail pending trial. Bail was granted where the only alleged role was

"raising lalkara," or being present at the site without performance of a criminal act. This maxim forms the basis for treating cases of further inquiry under Section 497(2) Cr.P.C.

8. In applying the settled principles to the instant case, *Allah Dad and Shaman Ali* being shown as merely present with hatchets and not shown to have inflicted injuries or performed any overt act, their case is distinguishable from Muhammad Hussain. As against them, judicial precedent dictates that until and unless concrete evidence emerges as to direct participation, involvement in common intention, or facilitation of the crime, the mere presence is insufficient to fix criminal liability. At the bail stage, benefit of doubt and the constitutional presumption of innocence warrant the grant of bail, especially when the prosecution case contains contradictions, is based on interested testimony, and lacks unimpeachable corroboration. Muhammad Hussain, on the other hand, faces a specific and principal role in the crime which deprives him of the leniency extended to those charged on the basis of mere presence.

9. Accordingly, it is well settled that "mere presence precludes the offence" unless there is evidence of an overt act or facilitation, and reliable precedents as reflected above sustain the case of *Allah Dad and Shaman Ali* for confirmation of bail.

10. For the reasons aforementioned, the interim pre-arrest bail already granted to Allah Dad and Shaman Ali is confirmed on the same terms and conditions. The bail application to the extent of Muhammad Hussain is dismissed and the earlier order is hereby re-called. Needless to say that above assessments are tentative in nature and shall not effect the merits of trial.

**J U D G E**