

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. S-709 of 2025

Applicants : 1) Muhammad Mureed s/o Sukhio Khan
2) Arbab @ Muhammad Murad s/o Sukhio Khan
3) Fida Hussain s/o Muhammad Mureed
4) Akhtar Ali s/o Arbab @ Muhammad Murad
All by caste Solangi
Through Mr. Rukhsar Ahmed M. Junejo, Advocate

Complainant : Muhammad Yousif s/o Muhammad Bux, Banbhan
Through Mr. Javed Iqbal Shaikh, Advocate

The State : Through Mr. Muhammad Raza Katohar, DPG

Date of Hearing : 20.11.2025
Date of Order : 20.11.2025

ORDER

KHALID HUSSAIN SHAHANI, J.— Applicants/accused named above seek pre-arrest bail in a case bearing crime No.104 of 2025, for offences under Sections 364 & 302 PPC, registered at Police Station Halani, District Naushahro Feroze. Their earlier bail application was recalled/rejected by the Court of learned Additional Sessions Judge, Kandiaro, District Naushahro Feroze, vide order dated 13.08.2025.

2. Concisely, facts segregated from the FIR lodged by Muhammad Yousif on 19.06.2025 are that, on the eventful day viz 18.06.2025, he along with his maternal uncle Muhammad Dawood, brother-in-law Faheem Ali and son Kashif Ali was busy in irrigating his agricultural land bearing S.No.200, situated in Deh Halani. At about 2130 hours, on torch light found Mureed Hussain, Arbab, Fida Hussain, Akhter Ali and Muhammad Ayoub being armed with deadly weapons arrived there. It is alleged that on gun point, accused abducted his son Kashif Ali at about 10:00 pm and forcibly took him in a white colored car. Meanwhile, his nephew Sohail Ahmed received a cell phone call from Muhammad Ayoub stating, spending Rs.30/- bullet, Kashif Ali was done to death and asked him to take his dead body. The complainant also received information

that dead body was taken to hospital by police in an ambulance. The complainant then found his son Kashif Ali dead, having sustained fire arm injury on his chest. Consequent upon; case was registered *inter alia* on above facts.

3. Mr. Junejo, learned counsel mainly contended that applicants have been implicated falsely due to admitted enmity over the landed property. He added, there was inordinate delay of 3 ½ hours in lodging of FIR; therefore, there is likelihood of due deliberation and consultation. It is next contended that story set-forth in the FIR does not click the prudent mind that if the son of complainant was abducted at the hands of the accused, what where the compelling circumstances which restrained the complainant to inform the police or at least to the co-villagers until and unless PW Sohail Ahmed received the cell phone call from co-accused Muhammad Ayoub. He put instance that a concocted story has been managed to strengthen the case, else alleged incident from bare reading of the FIR is unwitnessed one. It is also contended that though it is alleged in the FIR that after a while a cell phone call was received by P.W Sohail Ahmed from absconding co-accused Muhammad Ayoub that on spending Rs.30/- bullet, abductee Kashif Ali was done to death and take dead body of him, but such ocular account has not been corroborated by the scientific evidence, as neither the CDR of said P.W Sohail Ahmed nor of co-accused Muhammad Ayoub obtained during course of investigation. He also argued that during course of investigation, statement of one Imtiaz, the nephew of the co-accused Zahid was recorded on 24.06.2025, in which he categorically stated that the co-accused Zahid being his uncle was sole responsible for committing the murder of deceased Kashif Ali along with Sajid. Not only this, but after arrest of co-accused Zahid, recovery of unlicensed pistol was effected, as such a separate case bearing Cr.No.106/2025, for offence under Section 23(i), Sindh Arms Act, 2013 was registered against him; besides, a 30-bore empty recovered near from dead body of deceased Kashif Ali was sent for the FSL, which matches with the recovery of pistol effected from co-accused Zahid. He, therefore, stressed upon that as per post mortem report of

deceased, a single fire arm injury was sustained by him, which according to FSL report matches with the recovery of pistol from co-accused Zahid; therefore, case against the applicants comes within the ambit of further inquiry. It is also emphasized that during course of investigation, the complainant filed a Cr. Misc. Application No.2631/2025, under Section 22-A (6) (ii) Cr.P.C on 25.06.2025 for transfer of the investigation of the case referred above, which was allowed by the court of learned Additional Sessions Judge/Ex-Officio Justice of Peace Kandiaro vide order dated 28.03.2025 and thereby investigation was assigned to another I.O namely SIP Masood Jatt. He also argued that after usual investigation, report under Section 173 Cr.P.C was submitted, placing the names of applicants in column No.2, for insufficient evidence against them and holding co-accused Zahid, Sajid and Muhammad Ayoub to be actual perpetrators; however, learned Magistrate being not satisfied with such report took cognizance against the let off applicants. He also argued that in such a scenario, the prosecution case is of two versions, one set-forth in the FIR and other during course of investigation in which no sufficient evidence has been brought on the record to link the applicants with commission of the alleged offence and it is settled principle of law that the version supporting to the accused prevail while deciding the bail application. It is also argued that co-accused Zahid and Sajid are already on post arrest bail granted by the court of learned Additional Sessions Judge, Kandiaro vide order dated 13.08.2025; therefore, applicants also deserve same concession on the rule of consistency. It is also argued that case has already been challaned and applicants are no more required for investigation and prayed for confirmation of bail. Learned counsel relied upon unreported order dated 15.8.2025 passed by the Hon'ble Supreme Court of Pakistan in Cr. Petition No.727 of 2025, in which accused are admitted to bail by holding that *"The Investigating officer after concluding the investigation had placed the name of petitioner in column No.2. However, the Magistrate did not agree with the opinion and, therefore, he took cognizance. The complainant later had also recorded his statement on*

08.09.2024 whereby some other persons were nominated for the commission of the alleged offences. Whether petitioner was involved in alleged offences requires further probe". He also placed reliance on reported case laws (2012 SCMR 1137), (PLD 1994 SC 86), (2021 SCMR 63), (2020 SCMR 956), (2023 SCMR 884), (2023 SCMR 1152), (2023 SCMR 1898), (2023 SCMR 1712), (2023 SCMR 1773), (2023 SCMR 1729), (PLD 2021 SC 898).

4. Conversely, Mr. Katohar, learned Deputy Prosecutor General for the State duly assisted by Mr. Javed Iqbal Shaikh, counsel for the complainant records objections, mainly contending that names of the applicants appear in the FIR with role of abducting Kashif Ali, the son of the complainant on gun point from the lands in presence of the witnesses and subsequently, P.W Sohail Ahmed received cell phone call from the co-accused Muhammad Ayoub that spending Rs.30/- bullet, Kashif Ali was done to death and to collect his dead body; therefore, not only allegation of murder is against the applicants but also abducting son of complainant from the lands. It is next contended that parties reside in the same vicinity and well known to each other; therefore, their identification on torch light is sufficient, hence, no question of mistaken in identification arises. It is also contended that malice of the I.O is apparent on the record as he deliberately did not obtain CDR of the P.W Sohail Ahmed nor of the absconding co-accused Muhammad Ayoub though it was demonstrated in FIR that after a while cell phone call was received by the PW Sohail Ahmed from co-accused Muhammad Ayoub; this was the reason that an application for transfer of investigation was filed by the complainant, showing no confidence upon the investigating officer. Though, the investigation was transferred under the directives of learned Additional Sessions Judge/ Ex-officio justice of Peace Kandiaro but the subsequent I.O also shook hands with the accused and ultimately placed their names in column No.2 of the challan; however, learned Magistrate took cognizance against them. It is also argued that on the statement of an unknown person Imtiaz Ali, recorded on 24.06.2025, co-accused Sajid and

Zahid were held responsible for committing the murder of deceased Kashif Ali and the I.O gave undue weight to the statement of such person instead of Prosecution witnesses shown in the FIR. He put stance that plea of *alibi* is of no or less significance and also that there was sufficient evidence available against the applicants to link them with commission of the offence. Learned counsel in support of his contentions relied on reported case laws (2016 SCMR 2064), (PLD 1983 SC 82), (PLD 1974 SC 83), (PLD 1967 SC 539), (1981 SCMR 1139), (2022 MLD 540), (2024 YLR 140) and (2023 YLR 2117).

5. This Court has extended meticulous consideration to the arguments advanced by the learned counsels for the respective parties and DPG for the State as well as gone through the material placed on record.

6. It is observed that although the names of the applicants with parentage and addresses appear in the First Information Report with specific role of abducting deceased Kashif Ali at gunpoint while being armed with lethal weapons from agricultural lands at about 2200 hours where the complainant and prosecution witnesses were irrigating the same, there exist material contradictions and procedural infirmities which necessitate further inquiry into the matter. It is indeed a matter that requires deeper appreciation that though the identification of the applicants along with absconding co-accused Muhammad Ayoub is shown on torchlight being residents of same vicinity, yet the complainant party remained silent and took no action whatsoever to inform the police or even the co-villagers until and unless prosecution witness Sohail Ahmed received a cellular phone call from co-accused Muhammad Ayoub, informing him that Rs.30/- bullet was expended to commit the murder of Kashif Ali and asking to take his dead body. This narrative raises serious questions about the natural human conduct expected under such grave circumstances. Furthermore, upon perusal of the post mortem report of deceased Kashif Ali, it transpires that he sustained a single firearm injury on his chest, through and through, and no other injury has been found on the person of deceased to corroborate the

prosecution theory set forth in the First Information Report that he was abducted forcibly. The absence of any signs of struggle, confinement, or multiple injuries casts doubt upon the allegation of abduction. More significantly, though it is alleged that a cellular phone call was received after abduction of deceased Kashif Ali by prosecution witness Sohail Ahmed informing about commission of murder of deceased, no efforts whatsoever have been taken by the prosecution to collect the Call Detail Records of the cell phone number of said prosecution witness as well as of absconding co-accused Muhammad Ayoub to scientifically corroborate such important piece of evidence, which could have established or negated the prosecution's version. This omission on the part of the investigating agency is fatal to the prosecution case. More importantly, the dead body of deceased Kashif Ali was found lying in the street, and it remains a mystery as to who caused the fatal firearm injury to the deceased. In this respect, the Investigating Officer recorded the statement of one Imtiaz Ali, nephew of co-accused Zahid, on 24.06.2025, wherein he categorically stated that his uncle Zahid was solely responsible for causing such firearm injury to deceased along with co-accused Sajid. Surprisingly, the recovery of unlicensed pistol from co-accused Zahid, arrested on 25.06.2025, matches with the empty bullet recovered from the venue of occurrence as per the Forensic Science Laboratory report, thereby connecting co-accused Zahid with the commission of the actual offense rather than the applicants. In this respect, though the complainant demonstrated partial investigation on the part of first Investigating Officer Sub-Inspector Abdul Hameed Khichi and at his request the investigation was transferred to an independent Investigating Officer Sub-Inspector Masood Jatt under the directives of learned Additional Sessions Judge Ex-officio Justice of Peace Kandiaro vide order dated 28.03.2025, the subsequent Investigating Officer also finally submitted report under Section 173 Criminal Procedure Code placing the names of the applicants in column No.2 for insufficient evidence against them and holding co-accused Zahid, Sajid and Muhammad Ayoub to be actual perpetrators

of the crime. It is well-settled principle of law that mere mentioning of name of accused in column No.2 while submitting challan by the police does not debar the courts to evaluate the material on record, and finding of the police is not binding on the court. However, when the Investigating Officer, after usual investigation, places accused in column No.2 for insufficient evidence, yet the learned Magistrate takes cognizance against such let-off applicants, the matter requires further inquiry at trial stage. The prosecution case thus appears to be of two versions as rightly argued by the learned counsel for the applicants, one version set forth in the First Information Report and another version emerging during course of investigation wherein no sufficient evidence has been brought on record to link the applicants with commission of the alleged offense. In the case of *Ehsanullah v. The State* (2012 SCMR 1137), the Honorable Supreme Court has held that where investigating agency concluded that accused was not present at crime scene and no specific injury was attributed to him, bail should be granted as mere abscondence was insufficient to deny bail. Similarly, in the recent unreported order dated 15.08.2025 passed by the Honorable Supreme Court of Pakistan in Criminal Petition No.727 of 2025, the apex court admitted accused to bail by holding that "The Investigating Officer after concluding the investigation had placed the name of petitioner in column No.2. However, the Magistrate did not agree with the opinion and, therefore, he took cognizance. The complainant later had also recorded his statement on 08.09.2024 whereby some other persons were nominated for the commission of the alleged offences. Whether petitioner was involved in alleged offences requires further probe". This principle is directly applicable to the facts of the instant case.

7. The Honorable Supreme Court in *Jahanzeb and others v. The State* (2021 SCMR 63) has granted bail to accused who had not been attributed any overt act during occurrence except allegation of ineffective firing, holding that in such circumstances, it is for the learned Trial Court to determine, after recording evidence pro and contra, whether the accused is vicariously liable for

the act of co-accused and that case was one of further enquiry. Furthermore, in *Mukaram v. The State and another* (2020 SCMR 956), the Honorable Supreme Court observed that where there is inconsistency between medical and ocular evidence, the case of accused is fully covered by Section 497(2) Criminal Procedure Code calling for further inquiry into guilt. The principle that version supporting the accused prevails while deciding bail application is also well-established. More importantly, it is on record that co-accused Zahid and Sajid have already been granted post-arrest bail by learned Additional Sessions Judge, Kandiaro, vide order dated 13.08.2025, and on the principle of consistency, the applicants deserve same concession. The Honorable Supreme Court of Pakistan in *Muhammad Aziz alias Mana v. The State and others* (2023 SCMR 1773) has held that "Liberty of a person is a precious right which cannot be taken away without exceptional foundations". The case has already been challaned and applicants are no more required for investigation, and their detention would serve no beneficial purpose.

8. In *Sajid Hussain @ Joji v. The State* (PLD 2021 SC 898), it has been held that "The word 'further inquiry' has wide connotation. Interpretation of criminal law requires that the same should be interpreted liberally in favour of accused", is fully attracted to the instant case. The Honorable Supreme Court of Pakistan in *Ch. Saeed Ahmed Khalil v. The State and others* (2023 SCMR 1712) has expounded the principle that "Mere fraud of huge amount is no ground to decline bail to an accused" and "while granting pre-arrest bail, the merits of the case can be touched upon by the Court". Furthermore, in *Muhammad Nadim v. The State* (2023 SCMR 184), the apex court granted bail citing rule of consistency where co-accused had already been granted bail under similar circumstances, emphasizing importance of further inquiry and principle that like cases should be treated alike in bail matters. The Honorable Supreme Court of Pakistan in *Abdul Rehman alias Muhammad Zeeshan v. The State and others* (2023 SCMR 884) has held that "while granting pre-arrest bail, the merits of the

case can be touched upon by the Court". In *Munawar Bibi v. The State* (2023 SCMR 1729), the Honorable Supreme Court granted bail despite delay in lodging First Information Report and on principle of consistency where co-accused had been granted bail, holding that "any order by this Court on any technical ground that the consideration for pre-arrest bail and post-arrest bail are entirely on different footing would be only limited upto the arrest of the petitioner because of the reason that soon after her arrest she would be entitled for the concession of post-arrest bail on the plea of consistency". The principle has also been reiterated in *Miran Bux v. The State* (PLD 1989 SC 347) that liberal interpretation should be adopted while examining cases of further inquiry. The cumulative effect of material contradictions between ocular and scientific evidence, placement of applicants' names in column No.2 by Investigating Officer for insufficient evidence, grant of bail to similarly placed co-accused, and absence of any recovery from applicants, all point towards one inescapable conclusion that prima facie applicants have succeeded to make out case for further inquiry as envisaged under Section 497(2) Criminal Procedure Code. Accordingly, bail application stands allowed and interim pre-arrest bail order confirmed on the same terms and conditions, with the directions to the applicants to join investigation/trial. The observations made herein are purely tentative in nature and confined to deciding the bail application and shall not in any manner influence the learned Trial Court while deciding the case on merits after recording evidence.

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