

# IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S-743 of 2025

Applicant : Nisar Ahmed s/o Shahzado  
Through M/s Achar Khan Gabol & Shakeel Ahmed  
Siyal, Advocates

The State : Through M/s Mansoor Ahmed Shaikh & Khalil Ahmed  
Maitlo, D.P.Gs

Complainant : Abbas Ali s/o Ilyas Samtio  
Through M/s Shabir Ahmed Malik & Aftab Ahmed  
Malik, Advocates

Date of hearing : 19.02.2026  
Date of order : 19.02.2026

## **ORDER**

**KHALID HUSSAIN SHAHANI, J.** — Applicant Nisar Ahmed Samtio, seeks confirmation of interim pre-arrest bail in a case bearing Crime No.21 of 2025, for offences under Sections 302, 324, 337-H(ii), 147, 148, 149 and 114 PPC, registered at Police Station Bakhri, District Naushahro Feroze. His earlier plea for pre-arrest bail came to be declined by the learned Additional Sessions Judge, Kandiaro, vide order dated 20.08.2025.

2. The prosecution narrative, as adumbrated in the F.I.R. lodged by complainant Abbas Ali Samtio on 19.04.2025, is that on 18.04.2025 at about 09:00 a.m. the complainant, his brother Ilyas (since deceased), his maternal uncle Dilawar, and witnesses Dastar Ali and Ashraf Ali were threshing charan crop on their Darya Khurdi land in Deh Belo Bhounr, Taluka Kandiaro, when a sizeable number of alleged assailants, variously armed, descended upon the spot. It is alleged that the present applicant, armed with a Kalashnikov, along with co-accused Mushtaque alias Arbab (Kalashnikov), co-accused Rakhiyal (Kalashnikov), co-accused Muhib (pistol), and several others, not only criminally intimidated the complainant party but, on the exhortation of co-accused Muhib “not to spare” Ilyas, the petitioner and co-accused Rakhiyal caught hold of the deceased from both arms, whereupon co-accused Mushtaque alias Arbab fired a straight shot from his Kalashnikov at the head

of Ilyas, who succumbed at the spot. The remaining accused are alleged to have resorted to indiscriminate firing with intent to kill, from which the complainant party allegedly survived by dropping to the ground, following which the assailants decamped. The F.I.R was lodged on 19.04.2025 at 02:00 p.m, embodying a delay of about one day and five hours, notwithstanding that the distance between the place of occurrence and Police Station Bakhri is stated to be seven to eight kilometers. The challan was submitted on 06.07.2025; the petitioner was then shown as an absconder and proceedings under Sections 87 and 88 Cr.P.C were initiated before the learned Judicial Magistrate, Kandiaro, prior to the dismissal of his pre-arrest bail application by the learned Additional Sessions Judge, Kandiaro, inter alia on the premise that his role stood “established” and his abscondence disentitled him to relief.

3. Learned counsel for the applicant has, with considerable emphasis, invited attention to the temporal gap between the occurrence at 09:00 a.m. on 18.04.2025 and the lodging of the F.I.R at 02:00 p.m on 19.04.2025, contending that the delay of one day and five hours, in the face of a relatively nominal distance to the police station, is not a mere technicality but a material circumstance, pregnant with the possibility of deliberation, consultation and afterthought in the nomination of the accused. He has underscored the admitted pre-existing discord between the parties over matrimonial affairs and a *sikni* plot, arguing that such acknowledged enmity is a fertile breeding ground for false implication, particularly where, in a case involving a solitary fatal firearm injury, as many as ten persons have been arrayed as accused, thus reflecting what is contended to be a classic pattern of over-implication. It is further argued that the ocular witnesses Dilawar (maternal uncle of the complainant) and Dastar Ali and Ashraf Ali (close relatives) are all deeply interested, while no ostensibly independent person from the locality or the agricultural environs has been associated, despite the occurrence allegedly taking place in broad daylight in open fields. Learned

counsel has, moreover, placed particular stress on the confined role ascribed to the applicant, that of holding the deceased from his arms, with the fatal shot admittedly attributed to co-accused Mushtaque alias Arbab. The petitioner, though armed with a Kalashnikov, is not alleged to have fired a single shot, which, it is contended, fundamentally dilutes the inference of a “shared” murderous intent, especially in an allegedly pre-planned armed assault. Reliance has been placed on 2021 SCMR 1802 (for the principle that the individual role of each accused is to be independently evaluated for purposes of further inquiry), as well as on *Mahmood Akhtar v. Haji Nazir Ahmad* (1995 SCMR 310) and *Shahid v. The State* (1994 SCMR 393), wherein an accused whose alleged role is confined to holding the deceased while a co-accused inflicts the fatal injury has been brought within the ambit of further inquiry under Section 497(2) Cr.P.C, entitling him to bail.

4. Learned counsel has also invoked the rule of consistency, contending that co-accused Bahawal Samtio, Ghulam Nabi, Mehboob, Khadim Hussain and Ibrahim alias Bago stand admitted to pre-arrest bail by the learned Sessions Court on the footing that only their presence at the locus in quo was shown, with no specific role of firing attributed. The petitioner, it is argued, is at the very least equally placed for purposes of Section 497(2), Cr.P.C., given that, despite being allegedly armed, he did not resort to firing, thereby placing his case within that line of authority where the role of merely catching hold has been judicially treated as attracting further inquiry. It is additionally urged that since the grant of interim pre-arrest bail on 22.08.2025, the petitioner has scrupulously abided by the conditions imposed and has not misused the concession.

5. Conversely, the learned Deputy Prosecutor General has vigorously opposed the petition, characterizing the petitioner’s role as both specific and pivotal. According to him, the physical act of immobilizing the deceased by holding him from both arms, thereby depriving him of any possibility of

resistance, evasion or self-preservation, constituted an indispensable component of the homicidal transaction and squarely manifested a common intention within the contemplation of Section 34 P.P.C. He has submitted that the ocular account furnished by three cited eye-witnesses, whose statements under Section 161 Cr.P.C, allegedly corroborate the F.I.R stands further supported by the medico-legal evidence, which confirms a single firearm injury on the head of the deceased consistent with the prosecution version. Learned D.P.G has further underscored the petitioner's abscondence after submission of the challan and the initiation of proclamation proceedings under Sections 87 and 88 Cr.P.C, characterizing such conduct as a conscious and deliberate evasion of the process of law, which, in his submission, is per se sufficient to disentitle the petitioner to the extraordinary relief of pre-arrest bail. Reliance has been placed on (2025 SCMR 1718) and on unreported orders in Cr. Bail Application No. S-92 of 2025 and CRPLA No. 1512 of 2025, wherein, it is contended, a combination of abscondence and the act of holding the deceased was judicially treated as constituting strong grounds for declining bail.

6. I have heard learned counsel for the applicant, the learned Deputy Prosecutor General, and the learned counsel representing the complainant, and have undertaken a circumscribed examination of the available material on record, including the F.I.R, the statements recorded under Section 161 Cr.P.C, the post-mortem report, the challan, the impugned order of the learned Additional Sessions Judge, the order granting interim pre-arrest bail, and the authorities cited at the bar.

7. It is trite and too well entrenched in our criminal jurisprudence to admit of reiteration that, at the bail stage, the Court is not called upon to conduct a roving inquiry or to undertake a meticulous dissection of the evidence amounting to a mini-trial. The remit of the Court is limited to forming a tentative assessment as to whether the material on record, *prima*

*facie* and without deeper appreciation, gives rise to reasonable grounds within the meaning of Section 497(1) Cr.P.C or, conversely, brings the matter within the domain of further inquiry under Section 497(2) Cr.P.C. The ultimate determination of culpability must be jealously preserved for the trial Court, unclouded by any definitive pronouncement at the bail stage.

8. In the present matter, the pivotal question is the true legal complexion of the role attributed to the petitioner, viewed in the totality of attending circumstances. The prosecution's own case, as reflected in the F.I.R. and the supporting 161 Cr.P.C statements, is that the fatal firearm injury was inflicted by co-accused Mushtaque alias Arbab by a Kalashnikov shot at the head of the deceased, while the petitioner's attributed role is that of catching hold of the deceased from his arms, in concert with co-accused Rakhiyal. The petitioner is alleged to have been armed with a Kalashnikov, yet it is not the prosecution's case that he fired even a single shot during the entire occurrence. In a scenario where a group of allegedly armed men is said to have arrived with a pre-designed homicidal intent, the non-use of a lethal automatic weapon by one such allegedly armed participant, despite the actual commission of murder in his presence and the alleged indiscriminate firing by others, is a circumstance that cannot, at this stage, be dismissed as inconsequential. Rather, it introduces a degree of uncertainty as to the precise *mens rea* and the extent of participation of the petitioner, thereby nudging the matter towards the province of further inquiry envisaged by Section 497(2) Cr.P.C.

9. Jurisprudentially, the Supreme Court, in *Mahmood Akhtar v. Haji Nazir Ahmad* (1995 SCMR 310), treated an accused whose alleged role was confined to holding the deceased while a co-accused delivered the fatal blow as falling within the fold of further inquiry for purposes of bail. Likewise, in *Shahid v. The State* (1994 SCMR 393), it was held that where the role is circumscribed to that of getting hold of the deceased and the actual fatal injury

is attributed to a co-accused, a debatable and triable issue arises as to whether the requirements of Section 34 P.P.C stand fully attracted, thus justifying bail under Section 497(2) Cr.P.C. The more recent articulation in (2021 SCMR 1802) fortifies the principle that the role of each accused must be scrutinized individually, and that secondary or purely facilitative participation may warrant the concession of bail on the touchstone of further inquiry. On a tentative appraisal, the present petitioner's case appears, at least at this interlocutory stage, to be aligned with the principles expounded in the above-noted precedents.

10. The issue of delay in the lodging of the F.I.R. assumes added salience against the backdrop of admitted prior enmity over matrimonial matters and landed property. While it is equally well settled that mere delay is not invariably fatal to the prosecution at the stage of final adjudication, at the bail stage, where only a provisional view is permissible, an unexplained delay of one day and five hours, in a case of an open daylight occurrence, when juxtaposed with acknowledged hostility between the parties and the over-implication of a large number of accused in a single-injury homicide, reasonably gives rise to a hypothesis of deliberation and selective nomination which cannot be peremptorily ruled out without the benefit of full-fledged evidence. No cogent explanation for the delay, proportionate to the distance and circumstances, has been satisfactorily advanced at this stage. The rule of consistency, though not an inflexible dogma, nonetheless operates as a significant guidepost in bail matters. Co-accused who were granted pre-arrest bail by the learned Sessions Court on the basis of mere presence at the scene furnish a relevant comparative matrix. The petitioner's case is distinguishable in that a specific role has been attributed to him; however, when that role, as discussed above, is jurisprudentially recognized as one that may legitimately generate further inquiry in appropriate circumstances, it becomes difficult, at the tentative level, to ignore the argument that the petitioner should not be

treated with undue severity vis-à-vis co-accused already enjoying the concession of bail, especially when he is not alleged to have discharged his weapon at all.

11. Turning to the question of abscondence, it is undeniable that evasion of the process of law is a weighty factor, to which the Courts have repeatedly attached serious adverse inferences. The authorities cited by the learned D.P.G., including the unreported order in Cr. Bail Application No. S-92 of 2025 and the subsequent order in CRPLA No. 1512 of 2025, as well as 2025 SCMR 1718, do underscore that a combination of abscondence and active facilitative participation may justify refusal of bail. However, abscondence is neither an autonomous offence nor an absolute bar to the grant of pre-arrest bail in every conceivable circumstance; it remains one factor to be weighed in the overall factual and legal matrix. In the instant case, the petitioner has since surfaced before this Court, submitted to the jurisdiction, furnished the requisite surety, and, significantly, has not misused the concession of interim pre-arrest bail since August 2025. This subsequent conduct, evidencing submission to the judicial process, is a material circumstance that attenuates, though it does not obliterate, the earlier blemish of abscondence, and distinguishes the present matter from cases where the accused persistently remained fugitive for protracted periods even after rejection of bail by the competent Court.

12. When the cumulative effect of (i) the petitioner's non-use of the Kalashnikov despite its alleged possession; (ii) the admitted pre-existing enmity; (iii) the unexplained and substantial delay in lodging the F.I.R; (iv) the allegation of over-implication of multiple accused in a single-injury homicide; (v) the wholly related and interested character of the prosecution witnesses at this stage; (vi) the jurisprudence treating the role of merely holding the deceased as one of further inquiry; (vii) the rule of consistency vis-à-vis co-accused already admitted to bail; and (viii) the applicant's

subsequent submission to the Court's jurisdiction and non-misuse of interim bail, is evaluated in the limited perspective permissible at this stage, the case against the petitioner appears to be squarely covered by the expression "*further inquiry*" under Section 497(2) Cr.P.C.

13. In these circumstances, the interim pre-arrest bail earlier granted to the applicant, Nisar Ahmed Samtio, vide order dated 22.08.2025, is hereby confirmed. He shall continue to remain on bail on the same terms and conditions already imposed, subject, *inter alia*, to his punctilious attendance before the learned trial Court on each and every date of hearing, his cooperation with the investigating agency and the trial Court as and when required, and his not leaving the country without prior permission of the trial Court. In the event of any misuse of the concession of bail or violation of the conditions attached thereto, it shall be open to the prosecution or the complainant to seek cancellation of bail from the competent forum.

14. It is clarified, *ex abundanti cautela*, that all observations contained herein are of a tentative and interlocutory character, confined strictly to the adjudication of the present bail petition. Nothing stated herein shall be construed as an expression of opinion on the merits of the case, nor shall it fetter, circumscribe or otherwise influence the learned trial Court in arriving at its own independent conclusion on the basis of evidence adduced before it.

**J U D G E**