

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S-72 of 2026

Applicant : Zulfiqar son of Ali Hassan, Chohan
Through Mrs. Ishrat Asim Lodhi, Advocate

Complainant : Abdul Qayoom s/o Muhammad Eidan, Chohan
Through Mr. Wajid Ali Shaikh, Advocate

The State : Through Mr. Imran Mubeen, Addl. P.G

Date of hearing : 19.02.2026
Date of order : 26.02.2026

ORDER

KHALID HUSSAIN SHAHANI, J.— Applicant Zulfiqar, seeks post-arrest bail in a case bearing crime No.108 of 2025, for offences under Sections 302 and 34 P.P.C, registered at Police Station New Pind, District Sukkur, wherein he stands arraigned for *Qatl-i-Amd* of minor Muhammad Eidan, aged about two years, allegedly by causing his drowning in a drainage pond situate outside the house of co-accused Ali Hassan Chohan. The learned Additional Sessions Judge-IV, Sukkur, declined post-arrest bail to the applicant vide order dated 12.12.2025

2. Succinctly stated, the prosecution edifice, as delineated in the FIR lodged by complainant Abdul Qayoom, is that his marriage was solemnized about three years prior to the occurrence in the family of Ali Hassan Chohan, who, owing to matrimonial discord, harbored persistent animus against him. About two months before the incident, the complainant's father-in-law, Ali Hassan Chohan, is alleged to have forcibly taken the complainant's wife, Mst. Khalida, along with their minor son, Muhammad Eidan (aged about two years), and daughter, Jaweria (aged about eight months), from Shikarpur to his residence at Micro Sukkur, while purportedly extending threats that he would not spare the said minor and would cause loss to the complainant. On 20.10.2025 at about 1830 hours, the complainant, accompanied by his paternal uncle Sajjad Ali and his brother-in-law Toufique Ahmed, claims to have proceeded towards the said house, where he allegedly witnessed accused Ali

Hassan Chohan, in concert with the present applicant Zulfiqar, co-accused Waseem (armed with pistol) and one unidentified person, subjecting minor Muhammad Eidan to torture and thereafter casting him into the nearby drainage pond, from where the dead body was recovered. The complainant, after funeral rites, lodged the FIR on 22.10.2025.

3. Learned counsel for the petitioner has, with manifest vehemence, contended that the petitioner stands ensnared in a mala fide prosecution rooted in deep-seated matrimonial acrimony, which animus is patent *ex facie* the FIR itself. She has invited attention to the unexplained delay of about forty-four hours in setting the law in motion; the occurrence being alleged at 1830 hours on 20.10.2025, while the FIR was lodged at 1700 hours on 22.10.2025, notwithstanding that the distance between the locus in quo and the Police Station, as recorded in column No.4 of the FIR, is merely 3–4 kilometers. This hiatus, bereft of any contemporaneous or plausible explanation, is argued to have furnished ample latitude for deliberation, embroidery and calculated roping in of the applicant.

4. It is next urged that the petitioner is the real maternal uncle of the deceased, being the brother of Mst. Khalida, mother of the minor, and that the hypothesis that a *khala-zada mamoo* would, without any discernible provocation or motive of his own, actively procure the drowning of his two-year-old nephew as an incident of his father's matrimonial hostility towards the complainant, runs counter to ordinary human conduct and the innate protective instincts of near collateral kin. The alternate defence narrative, that the minor was taken away by the complainant from the house of the applicant's side and accidentally fell into the drainage pond due to the complainant's own negligence, is asserted not only to be inherently plausible but also to find substantial reinforcement from the medical and contemporaneous documentary record.

5. Learned counsel has further drawn sustenance from the post-mortem report rendered by Dr. Sumair Gul, GMMMC Hospital, Sukkur, which attributes the cause of death unequivocally to drowning in muddy water (*Naala*), while recording the complete absence of any external injuries, bruises, contusions, lacerations or marks of violence on the body of the deceased; no toxic substance was detected either. The memo of inspection and *mashir-nama* prepared at the spot and at the time of recovery of the dead body are similarly silent as to any injury. In the face of a prosecution narrative predicated on alleged torture and forcible drowning, this stark dissonance between ocular assertions and medical/forensic indicia is pressed into service to demonstrate that the substratum of the prosecution case stands, at the least, gravely shaken, thereby attracting the doctrine of “*further inquiry*” embodied in Section 497(2) Cr.P.C.

6. Counsel has also highlighted that all the cited eye-witnesses are closely related to and admittedly aligned with the complainant; no independent inhabitant of what is described as a thickly populated locality has been associated by the Investigating Officer. This, it is urged, is symptomatic of a partisan investigation conducted under the shadow of family hostility. The allegation that two additional FIRs have been procured against the applicant by the police at the instance of the complainant is invoked as an indicium of mala fides and overreach. Finally, it is pointed out that co-accused Ali Hassan Chohan and Waseem have already been granted bail by the learned trial Court vide order dated 31.01.2026 on materially congruent grounds, and the non-extension of similar relief to the petitioner, whose role is not shown to be graver, would offend the canon of parity and even-handedness in the exercise of judicial discretion.

7. Conversely, learned Addl. Prosecutor General has opposed the bail on the footing that the applicant stands specifically nominated in the FIR as a participant in the *Qatl-i-Amd* of an innocent child, and that the allegation,

being one under Section 302 P.P.C, squarely attracts the prohibitory clause of Section 497(1) Cr.P.C. He has, however, fairly conceded that apart from the ocular account furnished by related and interested witnesses, there is no independent incriminating material connecting the applicant with the occurrence, and that neither the *mashir-nama* nor the memo of inspection record any injury on the dead body; he has also not been able to dislodge the medical finding that death ensued by drowning simpliciter, without any concomitant signs of external violence.

8. Having heard learned counsel for the parties at some length and have undertaken a tentative appraisal of the material presently available on the record, conscious that at the stage of bail this Court does not embark upon a minute dissection or conclusive adjudication of evidence, which remains the province of the trial Court. The controlling test, consistently articulated in our jurisprudence, is whether there exist “reasonable grounds” for believing the accused to be guilty, or whether the case is one of “further inquiry” within the contemplation of Section 497(2) Cr.P.C, in which situation the concession of bail is ordinarily to follow.

9. The first prominent feature is the unexplained and substantial delay in lodging the FIR, despite the Police Station being at a very short distance from the place of occurrence. In a case admittedly arising out of a background of intense matrimonial discord and *inter-se* family litigation, such delay, unilluminated by any cogent explanation in the FIR or accompanying material, seriously erodes the presumption of spontaneity and enhances the probability of deliberation, consultation and embellishment. The Supreme Court has repeatedly regarded unexplained delay in similar settings as a circumstance militating against implicit reliance on the prosecution version at the interlocutory stage of bail.

10. Equally, if not more, significant is the state of the medical and forensic record. The post-mortem report assigns drowning in muddy water as

the exclusive cause of death and is categorical in recording the absence of any external marks of violence; the chemical examiner has not detected poisoning or any other extraneous cause. The *mashir-nama* and memo of inspection, being contemporaneous documents, are in complete harmony with the medical narrative in that they too do not notice any visible injury on the corpse. When such unimpeached medical and contemporaneous documentary evidence stands in direct contraposition to the ocular allegation of prior torture and forcible drowning, the latter cannot, at this stage, be accorded uncritical acceptance without penetrating further inquiry at trial. The conflict between ocular and medical evidence, where the latter materially undermines the former, has repeatedly been treated by this Court as a strong circumstance favoring the grant of bail on the ground of further inquiry.

11. The natural relationship inter se the parties furnishes yet another dimension. The deceased's mother is the real sister of the applicant; the applicant is thus the maternal uncle of the minor. While no absolute rule of law can be erected upon considerations of relationship alone, the suggestion that a maternal uncle would, merely as an adjunct to his father's quarrel with the complainant, actively participate in the intentional drowning of his two-year-old nephew is, at the least, sufficiently at odds with normal human behavior to warrant anxious scrutiny, particularly when the defence plea of accidental drowning is not only prima facie coherent but is also congruent with the medical and documentary record. At this stage, the defence version, to the extent that it introduces a reasonable doubt or an alternate hypothesis compatible with innocence, is not to be brushed aside as fanciful.

12. This court also cannot lose sight of the fact that the entire ocular edifice currently rests upon the statements of close relatives and admittedly interested witnesses, with no independent inhabitant of the locality having been joined, although the occurrence is alleged to have transpired in a thickly populated area in circumstances suggesting that neutral onlookers could have

been available. The studied omission to associate such witnesses, in a case of this gravity, detracts from the claim of an impartial and thorough investigation and reinforces the need for deeper probing at the trial.

13. The backdrop of protracted matrimonial strife and reciprocal litigation between the parties, including proceedings under Section 491 Cr.P.C, and a constitutional petition for protection filed jointly by the complainant and the deceased's mother, paints a picture of a deeply polarized intra-family conflict. Without venturing into definitive findings at this stage, the existence of such a fraught milieu reasonably bolsters the defence plea that the possibility of false implication, or at least over-implication, cannot be ruled out.

14. It is a further, and not inconsequential, consideration that co-accused Ali Hassan Chohan and Waseem, who are, respectively, the father and brother of the applicant and who stand attributed specific roles in the same occurrence, have already been admitted to bail by the competent Court on grounds substantially indistinguishable from those now urged before this court, including the absence of injuries in the post-mortem report, lack of independent corroboration, and the existence of underlying matrimonial hostility. In the absence of any distinguishing aggravating feature in the role ascribed to the present applicant, the denial of similar relief to him would run afoul of the principle of parity and offend settled norms governing the even-handed exercise of judicial discretion in bail matters.

15. Viewed cumulatively, the unexplained delay in lodging the FIR in a context of concededly strained relations; the complete absence of external injuries on the deceased as per post-mortem, *mashir-nama* and memo of inspection; the direct clash between the medical/forensic narrative and the ocular allegation of torture; the exclusive reliance upon related and interested witnesses from the complainant's side; the natural relationship of the applicant as maternal uncle of the deceased; the fraught background of matrimonial

litigation; and the grant of bail to similarly placed co-accused, together bring the case of the applicant well within the purview of “*further inquiry*” as envisaged by Section 497(2) Cr.P.C. In such a situation, the law, as enunciated consistently by the Apex Court, treats the grant of bail as the norm and its refusal as an exception, to be invoked only where compelling circumstances so dictate, which are conspicuously absent here.

16. For the foregoing reasons, applicant Zulfiqar, is admitted to post-arrest bail, subject to his furnishing solvent surety in the sum of Rs.2,00,000/- (Rupees Two Hundred Thousand only) with one surety in the like amount to the satisfaction of the learned trial Court.

17. Needless to add, any observation contained herein is purely tentative, confined to the disposal of this bail matter, and shall not prejudice the trial Court, which shall adjudicate on the basis of evidence recorded before it, untrammelled by anything stated in this order.

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