IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. S–246 of 2025

Applicants	:	1) Muneer Hussain s/o Inayat Hussain, 2) Tanveer Ahmed S/o Manzoor Hussain *Through* Mr. Ali Akram Baloch, Advocate
The State	:	*Through* Mr. Mansoor Ahmed Shaikh, DPG
Date of hearing	:	16.02.2026
Date of Short order	:	16.02.2026
Reasons recorded on:		18.02.2026

O R D E R

KHALID HUSSAIN SHAHANI, J.— Applicants Muneer Hussain son of Inayat Hussain and Tanveer Ahmed @ Tanveer Hussain son of Manzoor Hussain seek confirmation of pre-arrest bail in a case bearing Crime No.58 of 2023, for offences under Sections 365, 363, 511, 353, 147, 148 and 149 of the Pakistan Penal Code, registered at Police Station A-Section, Ghotki. Their earlier pre-arrest bail application before the learned Additional Sessions Judge-III, Ghotki, was dismissed vide order dated 13.03.2025.

2. The gravamen of the prosecution case, as reflected in the FIR, is that on 13.02.2023 at about 1230 hours, at Main Chowk, Ghotki, within the remits of Police Station A-Section, the applicants, along with four unknowns co-accused, riding on three motorcycles, intercepted a police party headed by SIP Hidayatullah Chandio, which was escorting detenue Mst. Noor Khatoon and minor Baby Anaya pursuant to the directions of the learned IIIrd Additional Sessions Judge, Ghotki. It is alleged that the petitioners, after alighting from their motorcycles, brandished pistols, obstructed the police officials in the discharge of their lawful duty, attempted to abduct the aforesaid lady and minor child from lawful police custody, and on resistance being offered by the police party, fled away from the scene, leaving behind one motorcycle, which was taken into possession under a *mashirnama*.

3. The record reveals that the applicants first approached the Court of the learned Additional Sessions Judge-III, Ghotki for the concession of pre-arrest bail, which was declined vide order dated 14.06.2023. Instead of submitting to the jurisdiction of the trial Court and facing the process of law, they chose to remain fugitives from justice for an extended period of about twenty-one months, culminating in the initiation and completion of proclamation proceedings against them. It was only thereafter that they invoked the jurisdiction of this Court by filing Criminal Bail Application No.S-171 of 2025, which was treated as an application for protective bail and allowed for a narrowly circumscribed period of seven days, subject to their surrender before the competent Court. On availing that concession, they again approached the learned Additional Sessions Judge-III, Ghotki through Criminal Bail Application No.396 of 2025, which too was dismissed vide order dated 13.03.2025, whereafter they once again invoked the jurisdiction of this Court by filing instant bail application.

4. Learned counsel for the applicants canvassed, *inter alia,* that the case is one of mala fide and ulterior motive arising out of matrimonial discord between applicant Muneer Hussain and his wife, Mst. Noor Khatoon; that as a natural guardian he could not, in law, be said to have committed the offence of kidnapping of his own minor child; that the proceedings under Section 491 Cr.P.C regarding custody stood earlier concluded; that there is delay in lodging of the FIR; that all cited witnesses are police officials subordinate to the complainant; that no independent witness from the busy locality of Main Chowk, Ghotki was associated; and that as the challan has now been submitted and certain offences do not fall within the prohibitory clause of Section 497, Cr.P.C., the matter would fall within the ambit of further inquiry.

5. Conversely, learned DPG for the State strongly opposed the instant pre-arrest bail application, contending that the applicants are specifically nominated in the FIR, and have been assigned an active and direct role in intercepting the police party at Main Chowk Ghotki in broad daylight while the detenue Mst. Noor Khatoon and minor baby Anaya were being escorted under protective orders of the learned IIIrd Additional Sessions Judge, Ghotki. He emphasized that the applicants, along with their accomplices, allegedly brandished pistols, deterred the police officials from discharging their lawful duty, and attempted to abduct the lady detenue and her minor daughter, but fled away leaving behind their motorcycle, which was secured by the police and *mashirnama* prepared accordingly. Learned DPG further argued that earlier pre-arrest bail application of the applicants was dismissed by the learned Additional Sessions Judge-III, Ghotki vide order dated 14.06.2023; thereafter, instead of surrendering, they remained absconders for a considerable period of about 21 months and only approached this Court, which converted their application into protective bail for a limited period with direction to surrender before the trial Court. He maintained that the challan has already been submitted and the police report supports the prosecution version; the offence under Section 365 PPC falls within the prohibitory clause; no case of further inquiry is made out; and the applicants, having misused the concession of law and remained in hiding, are not entitled to the extraordinary relief of pre-arrest bail.

6. It is trite that pre-arrest bail is an extraordinary relief, to be extended sparingly and only in cases where the accused succeeds in demonstrating, prima facie, not only a case of further inquiry on the merits but, more fundamentally, the element of mala fide, ulterior motive or design on the part of the complainant or the investigating agency in procuring his

arrest. The Honorable Apex Court has consistently held that the remedy under Section 498 Cr.P.C is not meant to obstruct the ordinary course of investigation and trial, nor to provide sanctuary to those who exhibit contumacious disregard for the process of law.

7. At the very threshold, the applicants are confronted with their own conduct. Jurisprudence has now crystallized to the effect that where an accused, after denial of bail or during the pendency of criminal process, deliberately absconds, evades arrest, or is declared a proclaimed offender, such conduct per se is a weighty factor militating against the grant or continuation of the concession of bail, quite apart from the intrinsic merits of the case. In a line of authorities commencing from *Yousuf Masih v. The State* (1987 P.Cr.L.J 1412), followed in *Muhammad Boota v. Muhammad Arshad* (Cr. Misc. No. 1481-CB of 2009), *Sharafat Ali v. The State* (Cr. Revision No. 680 of 2008, upheld in Cr. Petition No. 438-L of 2009), and *Atta-ur-Rehman v. Rana Phool* (Cr. Petition No. 558-L of 2014), it has been consistently affirmed that the abscondence of an accused and the issuance of non-bailable warrants or proclamation ipso facto operate as a legal negation of the earlier concession of bail and constitute a strong ground to decline such relief.

8. The principle was restated by the Supreme Court in Criminal Petition Nos.562, 563, and 564 of 2019, decided on July 25, 2019, wherein it was observed that “once an accused person, having been admitted to bail, is subsequently declared a proclaimed offender or non-bailable warrants for his arrest are issued and remain unexecuted due to his own conduct, such declaration or issuance of warrants, by necessary implication, amounts to cancellation of bail and disentitles him to seek a fresh concession, the law not permitting its own process to be subverted by contumacious

disobedience." Although it is equally recognized that mere abscondence, viewed in isolation and in the backdrop of a case otherwise falling within the ambit of further inquiry, may not in every situation constitute an absolute bar to bail, the distinction drawn in the precedents is between casual or short-lived absence and a studied, prolonged and deliberate evasion of the Court's jurisdiction, particularly after rejection of bail. Where, as in the present matter, the accused, following the refusal of pre-arrest bail by the Court of first instance, elects to remain at large for nearly twenty-one months and is proceeded against as a proclaimed offender, such calculated defiance stands on a different footing and furnishes a formidable ground to decline discretionary relief.

9. Examined from the standpoint of merits, the case of the applicants also does not inspire confidence. They are specifically nominated in the FIR, are assigned a clear and active role of intercepting a police party in broad daylight while the latter was executing a judicial order, of brandishing firearms, of deterring public servants from discharge of their lawful duty, and of attempting to abduct a lady and her minor child from lawful police escort. The version of the complainant is, at this stage, prima facie supported by the statements of the members of the police party and by the recovery of the abandoned motorcycle from the spot. The allegation is not of a private family encounter but of a brazen attempt to overawe the authority of the Court by forcibly wresting custody from police escort.

10. The plea that the incident is the offshoot of matrimonial discord and that a natural guardian cannot, in law, be said to have committed "kidnapping" of his own child, is, in the circumstances of this case, misconceived at the pre-trial stage. The accusation is not confined to the removal of a child from the keeping of a parent, but extends to an attempt

to remove a woman and a minor from police custody when such custody was being exercised in pursuance of a judicial direction. Whether, in a given factual matrix, the ingredients of Sections 363 and 365, P.P.C. stand fully attracted is a matter that must be thrashed out on evidence at trial and not pre-judged in collateral anticipatory proceedings. At this stage, the offence under Section 365 P.P.C, being punishable with imprisonment that may extend to seven years, clearly falls within the mischief of the prohibitory limb of Section 497(1) Cr.P.C and, when read with the aggravating circumstances attending the alleged attempt to obstruct the implementation of a court order, does not admit of being categorized as a case of mere further inquiry.

11. Equally untenable is the argument that the non-association of private witnesses or the alleged delay in lodging the FIR, by themselves, suffice to carve out a case for pre-arrest bail. The incident is alleged to have occurred at a public thoroughfare, but the complainant party comprised police officials in the discharge of an official mandate; non-joining of independent witnesses in such context, though a factor to be weighed at trial, does not ipso facto erode the substratum of the prosecution at the bail stage. Similarly, questions touching upon the precise timing of the FIR and the description of the official or private vehicles used are matters of appreciation of evidence, not determinative of *mala fide* for the limited purpose of anticipatory relief.

12. It may reiterate that pre-arrest bail is not to be employed as a shield by those who, while invoking equitable jurisdiction, present themselves with manifestly unclean hands. A person who, after rejection of his bail plea, absconds for nearly two years, suffers proclamation proceedings and only thereafter surfaces to seek anticipatory protection,

cannot, without undermining the moral authority of the law, be clothed with the status of an aggrieved litigant seeking equitable intervention. The law does not permit its own process to be turned into a stratagem for calculated evasion.

13. In the totality of circumstances, this court finds the conduct of the applicants, coupled with the nature and gravity of the allegations and the statutory bar attracted by the offence under Section 365 P.P.C, furnish no ground for exercise of the extraordinary jurisdiction of pre-arrest bail. No case of mala fide of a nature cognizable at this stage, nor of further inquiry within the meaning of Section 497(2) Cr.P.C, has been made out in favor of the applicants.

14. Consequently, the bail of applicants was declined vide short order dated 16.02.2026 and interim order dated 20.03.2025 recalled. Accordingly, they were taken into custody and remanded to jail, with the directions to the Superintendent, Central Prison Sukkur, to keep them in safe custody and be produced before the trial Court, which shall, so far as possible, proceed with the trial expeditiously and conclude the same within a reasonable span of time, uninfluenced by any observation made herein which shall be treated as tentative and confined to the question of bail. These are the detailed reasons thereof.

J U D G E