

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S-42 of 2026

Applicant : Dilawar Hussain s/o Rahib Mangnejo
Through Mr. Shafi Muhammad Bango,
Advocate

The State : Through Mr. Shafi Muhammad Mahar, DPG

Date of hearing : 27.02.2026

Date of order : 27.02.2026

ORDER

KHALID HUSSAIN SHAHANI, J.— The applicant, Dilawar Hussain, seeks post-arrest bail in a case bearing Crime No.95 of 2023, for offences under Sections 302, 147, 148 and 149 of the Pakistan Penal Code, 1860, registered at Police Station Setharja, District Khairpur. His earlier attempt for similar relief was declined by the learned Additional Sessions Judge, Mirwah, vide order dated 19.11.2025.

2. Succinctly narrated, the edifice of the prosecution's case, emanating from the FIR lodged by complainant Shah Bux reveals that on the night of 07.12.2023, a group of accused persons, inclusive of the present applicant, allegedly armed with deadly weapons, trespassed into the house of Mst. Sarwar Khatoon (sister of the complainant). It is alleged that co-accused Shahban wielded a knife and inflicted injuries on the head of the deceased, while co-accused Muhammad Khan and Mazhar purportedly struck hatchet blows, causing her demise at the spot.

3. Learned counsel for the applicant, while traversing the factual matrix, has advanced that the entire prosecution story *qua* the applicant is tainted with falsity and exaggeration. It was urged that no specific or fatal blow stands attributed to him; the only allegation is his presence while holding a *lathi*, absent any overt or offensive act. It was further

contended that co-accused namely Mazhar, Rahib, and Barkat Ali, placed similarly in the ocular account, have already been admitted to bail, two on pre-arrest and one on post-arrest basis by the learned trial Court vide orders dated 04.10.2024 and 27.05.2025 respectively, and on the principle of consistency, denial of identical relief to the present applicant would amount to discriminatory exercise of discretion. Learned counsel further submitted that even prior absconsion, though not condonable, per se does not constitute a valid or sufficient ground for the refusal of bail when the evidentiary parameters render the case one of further inquiry. Reliance was placed on (SCMR 2009 SC 299), (2018 YLR Note 222) and (2022 YLR Note 104).

4. Conversely, learned Deputy Prosecutor General appearing for the State, in his characteristic fairness, did not controvert the factual and legal premises advanced by the defence. He submitted that the role assigned to the applicant is indeed analogous to that of other co-accused who have already been extended the concession of bail, and that mere absconsion, standing alone, cannot be construed as a conclusive indicator of guilt or an embargo against bail, particularly when the rest of the evidence invites judicial scrutiny within the ambit of further inquiry.

5. I have heard the learned counsel for the parties and have also meticulously scanned the record with the circumspection that a matter of this nature warrants. The ocular assertions delineate that the direct allegation of inflicting knife blows on the vital region of the deceased's body is confined exclusively to co-accused Shahban. The applicant, on the contrary, is merely alleged to have accompanied the co-accused, armed with a lathi, with no categorical attribution of an aggressive act.

The evidentiary complexion thus suggests at best a passive presence, devoid of any material indicating active participation or common intention in the homicidal act.

6. It is equally of significance that the co-accused Mazhar, Rahib and Barkat Ali, whose purported roles stand on identical footing have already been enlarged on bail. The doctrine of consistency, deeply embedded in the jurisprudence of this Court, enjoins upon the judicial forum that similarly placed accused should not be subjected to disparate treatment (*Muhammad Tanveer v. The State*, PLD 2017 SC 733). The principle of parity, therefore, fortifies the applicant's entitlement to identical relief.

7. With regard to the spectre of absconsion, it is settled law, reiterated inter alia in *Tariq Bashir v. The State* (PLD 1995 SC 34) and *Ayub Masih v. The State* (PLD 2002 SC 1048), that absconsion alone, unbacked by independent incriminating evidence, cannot be treated as determinative of culpability or as a legal impediment to the grant of bail. Each case must be assessed on its distinct evidentiary merit, and when the substratum of the allegations does not *prima facie* reveal the applicant's active participation, the mere circumstance of evasion cannot override the presumption of innocence.

8. Viewed cumulatively, the evidentiary landscape *prima facie* renders the prosecution case against the applicant *open to further inquiry* within the contemplation of Section 497(2) of the Code of Criminal Procedure, 1898. The question whether the applicant shared common intention with his co-accused or acted in concert with them is a matter to be unraveled after a full-fledged trial, not at this interlocutory stage.

9. Accordingly, the applicant has succeeded in bringing his case within the purview of the beneficial provision of Section 497(2) Cr.P.C. He is, therefore, admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand only) and a personal recognizance bond in the like amount to the satisfaction of the learned trial court.

10. It is, however, clarified that the observations herein are purely tentative, confined to the disposal of the instant bail application, and shall not prejudice the merits of the case at trial.

J U D G E