

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. S-1223 of 2025

Applicants : 1) Kamaluddin @ Kamal S/o Allah Wassayo
2) Ali Anwar @ Ali S/o Allah Wassayo
3) Abdul Ghaffar S/o Abdul Ghafoor
All by caste Mahar
Through Mr. Anwar Ali Lohar, Advocate

Complainant : Mst. Nafeesa Wd/o Barkat Ali, by caste Mahar
Through Mr. Achar Khan Gabol, Advocate

The State : *Through* Mr. Muhammad Raza Katohar, DPG

Date of hearing : 12.02.2026
Date of Short order : 12.02.2026
Reasons recorded on : 17.02.2026

ORDER

KHALID HUSSAIN SHAHANI, J.— Applicants Kamaluddin @ Kamal, Ali Anwar @ Ali and Abdul Ghaffar, seek confirmation of interim pre-arrest bail in respect of Crime No.172 of 2025, for offences under Sections 302, 506/2, 201, 342, 147, 148 and 149, Pakistan Penal Code, registered at Police Station Daharki, District Ghotki. Their earlier request for such relief stood declined by the learned Additional Sessions Judge, Daharki, vide order dated 10.10.2025.

2. According to the FIR lodged on 18.09.2025 by the complainant, Mst. Nafeesa, the alleged incident occurred in the intervening night of 12.09.2025 at about 03:00 a.m. at her house situated in Muslim Colony, Daharki. It is alleged that the complainant, her husband Barkat Ali Mahar, her brother-in-law Balakh Sher, and her uncle Faiz Muhammad were asleep when, upon hearing a commotion, they awoke and, in the light of electric bulbs, purportedly saw the present applicants, along with two unknown persons, armed with iron rods, lathi and pistols, having entered their house with faces uncovered. The intruders allegedly threatened the inmates with dire consequences if they intervened, declaring that they would murder Barkat Ali; thereafter, Kamaluddin is stated to have inflicted multiple iron-rod blows on the back of the head and left ear of Barkat Ali, Ali Anwar allegedly delivered further iron-rod blows on the back of

his head, while Abdul Ghaffar is alleged to have caused lathi blows on his left eye and cheek, resulting in profuse bleeding and his instantaneous death. It is further alleged that the dead body was then dragged outside and placed in a silver-colored jeep parked nearby, whereafter Kamaluddin and Ali Anwar departed in the jeep with the dead body, while Abdul Ghaffar took away the deceased's motorcycle, and the two unidentified assailants confined the complainant and her family members in a room under threats of death. In the morning, the complainant allegedly found the dead body of Barkat Ali and his motorcycle lying near NHW Road by village Hafiz Suleman, from where the body was shifted to Government Hospital, Daharki, for postmortem, culminating in the registration of the FIR.

3. Learned counsel for the applicants has, with some vehemence, argued that the applicants are innocent and have been roped in with mala fide and ulterior motives on account of a prior matrimonial discord involving the deceased Barkat Ali, which aspect stands adverted to even in the body of the FIR itself. It is contended that the deceased was a nominated accused in earlier Crime No.87 of 2024, arising out of a tribal feud between the Mahar and Shar communities, and that his death near the NHW Road appears to be accidental, a hypothesis allegedly supported by Roznamcha entry No.47. It is further urged that there is an unexplained delay of about six days in the lodging of the FIR, despite the police station being situated at a distance of hardly one kilometer from the alleged place of occurrence, which delay, according to learned counsel, is fatal to the prosecution and indicative of deliberation, consultation and embellishment. Learned counsel further contends that the memo of inspection of the place of occurrence (the complainant's house) does not depict any blood-stained earth or traces consistent with the dragging of a dead body to a jeep, as alleged in the FIR, and that the pistol belonging to the deceased was recovered from the alleged place of recovery near the road, which militates against the ocular version that the body was removed in a jeep after the assault. It is also submitted that the ocular account

does not sit in harmony with the medical evidence, inasmuch as the postmortem report is said neither to specify the weapon nor to fully corroborate the injuries as described, thereby attracting the doctrine of “further inquiry” within the contemplation of section 497(2) Cr.P.C. Learned counsel further maintains that the applicants, being respectable residents of the locality, participated in the postmortem, funeral and condolence ceremonies of the deceased, which, according to him, is wholly inconsistent with the allegation of their being perpetrators of a premeditated murder. He has also referred to alleged repeated police raids, attempts at arbitrary arrest without any FIR, and the earlier recall of interim bail as reflective of mala fide on the part of the police, warranting the protective umbrella of pre-arrest bail to safeguard the applicants’ liberty, dignity and reputation.

4. Conversely, learned Deputy Prosecutor-General, Sindh, assisted by learned counsel for the complainant, has opposed the confirmation of interim bail, contending that the applicants stand specifically nominated in the FIR with vivid and active roles in the infliction of fatal injuries upon the deceased, culminating in his death, thereby attracting the rigors of Sections 302, 506/2, 201, 342, 147, 148 and 149, PPC. It is argued that the complainant’s narrative is consistent and receives support from the statements of eye-witnesses recorded under Section 161 Cr.P.C, which collectively portray an intentional, concerted and armed assault upon the deceased, coupled with the unlawful confinement of the complainant and her relatives under threats of death. Learned DPG submits that the delay in lodging the FIR is reasonably explicable in the factual backdrop of the complainant’s trauma and shock consequent upon the brutal killing of her husband. He further asserts that no cogent material has been brought on record to prima facie establish mala fide or ulterior design on the part of either the complainant or the investigating agency. It is lastly urged that, the case being one falling within the prohibitory clause of Section 497(1) Cr.P.C, the extraordinary and discretionary relief of pre-arrest bail cannot be extended in the absence of

exceptional circumstances, particularly when investigation is in progress, weapons are yet to be recovered and the tentative appraisal of the material on record, according to the prosecution, connects the petitioners with the alleged offence.

5. I have heard the learned counsel for the parties at considerable length and have perused the FIR, relevant *roznamcha* entries, postmortem report, case diary and other material so far collected during investigation. The jurisprudential position regarding the grant of pre-arrest bail is by now well-settled: such relief remains an extraordinary judicial dispensation, to be invoked sparingly and extended only in exceptional circumstances, *inter alia* where mala fide, ulterior motive, or colourable exercise of authority is *prima facie* discernible, or where the material on record is so deficient that the very necessity of arrest stands seriously undermined. Simultaneously, it is equally trite that each accused is to be evaluated on the touchstone of his individual role, the nature of the injuries attributed to him, and the quantum and quality of material presently available, without trenching upon issues properly reserved for the trial Court, which will undertake a full-fledged appraisal of evidence. The doctrine of “*further inquiry*” under Section 497(2) Cr.P.C, contemplates precisely such tentative, exploratory assessment of the record as may generate doubt about the involvement of the accused, entitling him, during the interregnum, to the concession of bail.

6. A scrutiny of the record reveals that the incident is alleged to have taken place on 12.09.2025 at about 03:00 a.m., while the FIR came to be lodged on 18.09.2025, thus exhibiting a delay of six days which, on the material so far produced, remains substantially unexplained. The police station is, by the complainant’s own showing, located at a distance of about one kilometer from the alleged place of occurrence, a factor which would ordinarily facilitate prompt recourse to the law-enforcement machinery. The law has consistently regarded prompt reporting as enhancing the intrinsic worth of the prosecution version, whereas unexplained or inadequately explained delay is treated as a circumstance

capable of affording opportunity for deliberation, consultation, and possible fabrication or embellishment. In the case of *Mohammad Ishaq v. The State* (2007 SCMR 108), the Supreme Court attached significance to delay in lodging the FIR, especially when coupled with proven enmity between the parties, treating such circumstances as sufficient to dilute the prosecution's claim to spontaneity and veracity. In the present matter, the apparent absence of any compelling explanation for the six-day delay, in the context of the existing background of disputes involving the deceased, prima facie engenders doubt about the unvarnished accuracy of the prosecution narrative and, at this stage, leans in favor of the doctrine of "*further inquiry*".

7. It also emerges from the postmortem report and the relevant Roznamcha entry that the dead body of the deceased was found lying near the NHW Road rather than at the complainant's house, which is the alleged situs of the assault. This circumstance, when viewed against the narration that the body was dragged from inside the house and loaded into a jeep, raises a legitimate query as to the precise manner, situs and sequence of events culminating in the death of Barkat Ali and the subsequent placement of his body at the roadside location. The record further discloses that the deceased was already implicated as an accused in Crime No.87 of 2024, arising out of a tribal clash between the Mahar and Shar communities, thereby introducing an additional dimension of existing hostility and potential alternative hypotheses concerning the cause and agency of his death. When such factors are taken cumulatively with the unexplained delay in registration of the FIR, the case against the applicants assumes a complexion in which their precise role and culpability cannot, at this tentative stage, be regarded as free from doubt, thus bringing their case within the remit of "*further inquiry*" under Section 497(2) Cr.P.C.

8. Another aspect of the matter is that, as argued by learned counsel for the applicants, the applicants are shown to have participated in, or at least remained present during, the postmortem and funeral rites of the deceased, and

attended the condolence gatherings. While such conduct is by no means conclusive of innocence, it does, at the very least, attenuate the allegation of overt and declared hostility of the degree ordinarily associated with a premeditated homicidal assault of the nature alleged. The attribution of injuries in the FIR, though specific in terms of naming each applicant, assumes an omnibus character when tested against the overall matrix, including the medical evidence, the absence of corroborative traces at the alleged primary crime scene, and the disputed trajectory of the dead body from the house to the roadside location. In this milieu, the evidentiary substratum connecting each applicant, in an individualized and definitive manner, with the alleged fatal outcome appears, at this stage, to be neither so cogent nor so incontrovertible as to exclude the application of the doctrine of "*further inquiry*".

9. It is also of significance that, while the FIR names the present applicants, the two other alleged assailants remain unidentified, the recovery of the alleged weapons of offence is still under process, and the precise cause and mechanics of death continue to be the subject of forensic and investigative scrutiny. The postmortem report, in its present form, does not categorically specify the precise weapon or weapons employed nor does it, in an unambiguous manner, fully dovetail with the ocular account so as to foreclose all alternative hypotheses, including an accidental or differently sequenced occurrence. In circumstances where the investigation can effectively proceed without the custodial detention of the applicants, and where the material so far collected does not conclusively justify their incarceration, the insistence upon arrest would be difficult to reconcile with the constitutional guarantee of personal liberty and the evolving jurisprudence that condemns arrest for collateral or oppressive purposes. To deny pre-arrest bail in such a fact-situation, despite the availability of grounds generating genuine doubt, would risk converting the process of arrest into a punitive and stigmatizing measure rather than an investigative necessity.

10. The cumulative effect of the foregoing factors is that the prosecution case, in its present nascent and fluid state, does not furnish such unimpeachable material as would inevitably warrant the custodial arrest of the applicants at this stage. The unexplained delay in the lodging of the FIR, the location of the dead body at a place different from the alleged site of the assault, the previous involvement of the deceased in inter-tribal litigation, the petitioners' post-occurrence conduct and their asserted participation in the funeral rites, together with the presently inconclusive medical and investigative record, collectively render the matter one calling for deeper probe at trial rather than pre-trial incarceration of the petitioners. The absence of clear, direct and incontrovertible material establishing a deliberate and active homicidal intent attributable, in individualized terms, to each of the applicants, prima facie dislodges the justification for the refusal of the protective remedy of pre-arrest bail.

11. In view of the foregoing discussion, I am persuaded to hold that the case of the applicants falls squarely within the ambit of "further inquiry" envisaged by Section 497(2) Cr.P.C, and that they have, on the material presently available, made out a case for the confirmation of the interim pre-arrest bail earlier extended to them. Accordingly, the interim pre-arrest bail already granted to the applicants, namely Kamaluddin @ Kamal, Ali Anwar @ Ali, and Abdul Ghaffar, was confirmed on the same terms and conditions, vide short order dated 12.02.2026, and these shall be the detailed reasons thereof.

12. It is, however, expressly observed that all findings and observations contained herein are strictly tentative, confined to the adjudication of the present pre-arrest bail petition and shall not, in any manner, prejudice, influence or fetter the learned Trial Court in the independent appraisal of evidence and final adjudication of the case on its own merits in accordance with law.

J U D G E