

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Bail Application No.S-59 of 2026

Applicant : Abdul Qadir through Mr. Sadam Hussain Khoso, Advocate.

Respondent : The State through Ms. Rameshan Oad, Deputy Prosecutor General, Sindh.

Complainant : Mushtaque Ali through Mr. Arslan Ahmed Qureshi, Advocate.

Date of hearing : 27.02.2026.

Date of Order : 27.02.2026.

## O R D E R.

**RIAZAT ALI SAHAR, J:-** Through instant bail application, the above named applicant/accused seeks post-arrest bail in Crime No.239/2025 registered at Police Station Kotri, District Jamshoro for the offence under sections 302, 311, 34 PPC. Earlier, bail plea of the applicant/accused was declined by the learned Additional Sessions Judge-II, Jamshoro at Kotri vide orders dated 21.10.2025.

2. Brief facts of the prosecution case, as set out in FIR are that complainant Mushtaque Ali lodged the FIR on 18.05.2025 stating that his sister Mst. Rani had been married about 15–16 years earlier to accused Niaz Hussain Jamali, who allegedly used to suspect her character and maltreat her, resulting in dissolution of the marriage through *Khula* in the year 2017. Due to the said dissolution, Niaz Hussain allegedly developed grudge against the complainant party and had previously been involved in litigation with them. On 17.05.2025 at about 07:30 a.m., the complainant's brother Ghulam Murtaza was dropping his children at school on a motorcycle while the complainant, along with his brother Deedar and cousin Maqsood, was following him in a rickshaw. When Ghulam Murtaza stopped his motorcycle near the school, four persons arrived on two motorcycles, namely Niaz Hussain, Abdul Qadeer, the present applicant Abdul Qadir, and one unknown person. It is alleged that accused Abdul Qadeer and Niaz Hussain alighted from their motorcycles and fired pistol

shots at Ghulam Murtaza, causing firearm injuries which resulted in his death at the spot. The accused persons allegedly fled from the place of incident. The deceased was shifted to the hospital and after completion of medico-legal formalities, the complainant lodged the present FIR.

3. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated due to previous family dispute between the parties. He contended that no specific role or overt act of firing has been attributed to the present applicant in the FIR and the allegation against him is merely of presence at the spot, thereby attracting the principle of further inquiry within the meaning of Section 497 (2) Cr.P.C. Learned counsel further contended that the alleged firing was attributed only to co-accused Abdul Qadeer and Niaz Hussain, while no weapon was alleged to be in possession of the applicant nor any recovery has been effected from him during investigation. He further contended that the case rests upon interested witnesses being close relatives of the deceased and no independent witness from the locality has been associated despite the incident having allegedly occurred near a school in a populated area. Learned counsel contended that the investigation has already been completed and challan submitted, therefore, further detention of the applicant would serve no useful purpose. Lastly, he contended that the applicant is a student, has no previous criminal record and the matter requires deeper appreciation of evidence at trial, therefore he is entitled to the concession of bail.

4. Conversely, learned Deputy Prosecutor General Sindh vehemently opposed the grant of bail and contended that the applicant has been nominated in the FIR with specific presence along with co-accused persons who committed the murder of the deceased. She contended that the occurrence took place in broad daylight in the presence of eye-witnesses whose statements under Section 161 Cr.P.C support the prosecution version. Learned D.P.G further contended that the offence alleged falls within the prohibitory clause of Section 497 Cr.P.C being a charge of murder punishable under Section 302 PPC. According to her, the motive for the offence has also been mentioned in the FIR relating to prior family dispute arising out of the dissolution of marriage of Mst. Rani, therefore, sufficient material exists connecting the applicant with the commission of the offence at this stage.

5. Learned counsel appearing for the complainant adopted the arguments advanced by the learned D.P.G and further contended that the

applicant was present at the place of occurrence along with the principal accused and shared common intention with them in committing the murder of the deceased. He, therefore, contended that the applicant does not deserve the concession of bail.

6. I have heard the learned counsel for the parties at considerable length and have carefully examined the material available on record with their able assistance.

7. At the bail stage, the Court is required to make a tentative assessment of the available material without conducting a deeper appreciation of evidence, which is the exclusive domain of the trial Court. **The record reflects that the allegation of making fatal firearm shots has specifically been attributed to co-accused Abdul Qadeer and Niaz Hussain. So far as the present applicant Abdul Qadir is concerned, no specific role of firing or causing injury to the deceased has been assigned to him in the FIR. The only allegation against him is that he was present along with the other accused persons at the time of alleged occurrence.** The absence of any specific overt act attributed to the applicant *prima facie* diminishes the degree of his alleged participation in the occurrence and renders the question of his involvement a matter requiring deeper scrutiny during trial.

8. **It is also significant that the prosecution has not alleged that the applicant was armed with any weapon at the time of alleged occurrence nor has any weapon been recovered from his possession during the course of investigation.** The absence of recovery from the applicant further weakens the direct nexus between him and the commission of the alleged offence at this tentative stage. Another important aspect which cannot be overlooked is that the dispute between the parties admittedly stems from previous family discord relating to the dissolution of marriage of the complainant's sister from co-accused Niaz Hussain. The existence of such prior enmity, though it may furnish motive for the occurrence, at the same time creates the possibility of false implication or exaggeration in the nomination of persons allegedly involved in the occurrence. In such circumstances, the allegation of the applicant's presence with the principal accused requires strict proof through evidence which can only be tested during trial.

9. Furthermore, the incident is alleged to have taken place near a school in a thickly populated locality during morning hours. Despite this,

the prosecution has relied primarily upon witnesses who are closely related to the deceased, while no independent witness from the locality has been cited in support of the prosecution version. The evidentiary value and credibility of such witnesses will ultimately be assessed by the trial Court after recording evidence, but at the bail stage, this factor also creates a question requiring further inquiry. The Honourable Supreme Court in the case of ***SALMAN MUSHTAQ and others v. The STATE through P.G. Punjab and another (2024 S C M R 14)*** has held that:

*“7. The doctrine of 'further inquiry' refers to a notional and exploratory assessment that may create doubt regarding the involvement of the accused in the crime. The expression "reasonable grounds" as contained under section 497, Cr.P.C., obligates the prosecution to unveil sufficient material or evidence to divulge that the accused has committed an offence falling within the prohibitory clause of section 497, Cr.P.C. However, for seeking the concession of bail, the accused person has to show that the evidence collected against him during the investigation gives rise to clear-headed suspicions regarding his involvement. While deciding bail applications, it is the elementary duty of the courts to apply a judicious mind tentatively to reach a just and proper conclusion on whether reasonable grounds are made out to enlarge the accused on bail. The axiom 'reasonable grounds' connotes and associates those grounds that are legally acceptable and based on reasons that attract the judicial mind, as opposed to being imaginative, fallacious and/or presumptuous. In the aforesaid situation, the possibility of mala fide intention in lodging the FIR cannot be ruled out, and, at this stage, there are no reasonable grounds for believing that the accused are involved; rather, there are sufficient grounds for further inquiry to prove the guilt of the accused persons.”*

10. It is also pertinent to note that the investigation in the present case has already been completed and the challan has been submitted before the trial Court. The applicant is no longer required for any further investigation. Continued incarceration of the applicant in such circumstances would not serve any useful purpose, particularly when the trial is likely to consume considerable time before its conclusion. The principle governing bail is well settled that where the role attributed to an accused is not specific and the case requires deeper appreciation of evidence, the matter falls within the ambit of “further inquiry” as contemplated under Section 497 (2) Cr.P.C. At this stage, the Court is not required to determine the guilt or innocence of the accused but only to see whether reasonable grounds exist to believe that the accused has committed the offence or whether the case calls for further inquiry.

11. In the present case, the absence of any specific allegation of firing against the applicant, lack of recovery, the background of prior family dispute and the overall circumstances of the case collectively create sufficient doubt regarding the exact role of the applicant, which can only be resolved after recording evidence at trial. These factors bring the case of the applicant within the purview of further inquiry as envisaged under Section 497(2) Cr.P.C. It is also a settled principle of criminal jurisprudence that bail is the rule and jail is the exception, particularly where the evidence against an accused is not free from doubt at the preliminary stage. The purpose of detention before conviction is merely to ensure the presence of the accused during trial and not to punish him before determination of his guilt.

12. For what has been discussed above and tentative assessment of the material available on record, I am of the considered view that the case of the present applicant falls within the ambit of further inquiry and he is therefore entitled to the concession of bail. Consequently, the bail application is **allowed**. The applicant/accused Abdul Qadir son of Abdul Hakeem Jamali is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand) and PR bond in the like amount to the satisfaction of the learned trial Court. These are the reasons for my short order dated 27.02.2026.

13. It is clarified that the observations made hereinabove are purely tentative in nature and shall not influence the learned trial Court while deciding the case on merits.

14. Let a copy of this order be transmitted to learned Additional Sessions Judge-II, Jamshoro at Kotri for future guidelines.

JUDGE