

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Application No. S-73 of 2025

Applicants : 1. Sadique Ali s/o Muhammad Usman
2. Ashique Ali s/o Wakhas, Mahesser
3. Muhammad Maroof s/o Muhammad Ismail
4. Qurban Ali s/o Shah Nawaz Khan, Shahani
Through Mr. Ferozuddin N.Shaikh, Advocate

The State : *Through* Mr. Mansoor Ahmed Shaikh, DPG

Dated of Hearing : 22.12.2025

Dated of Short order : 22.12.2025

Reasons recorded on : 23.12.2025

O R D E R

KHALID HUSSAIN SHAHANI, J. Applicants Sadique Ali, Ashique Ali, Muhammad Maroof, and Qurban Ali, seek pre arrest bail in a case bearing Crime No.106/2023, for offences punishable under Sections 302, 324, 353, 224, 225, 148, and 149 PPC, registered at Police Station Ranipur, District Khairpur. The applicants had earlier moved the learned Additional Sessions Judge-I/MCTC, Khairpur, for the same relief, which was declined vide order dated 16.01.2025.

2. According to the prosecution version, on 23.06.2023, the complainant, Sub-Inspector of Police Sadique Ali Abbasi, received “spy information” that a proclaimed offender, Sohbat alias Sobho Kalhoro, wanted in Crime No.01/2023, for offences u/s 392, 215, 34 PPC (PS Sobhodero) and Crime No. 45/2022, for offences u/s 324, 353, 399, 402 PPC (PS Agra), had been sighted outside the shrine of Sachal Sarmast. Acting upon this information, the complainant, accompanied by ASI Muhammad Maroof, HC Qurban, PC Muhammad Khan, PC Noorullah, PC Ashique Ali, and DPC Mushtaque Ali, left the police station at about 10:00 a.m. in a government vehicle and reached the specified location at 11:45 a.m.

3. At the spot, the police party observed three persons sitting along with some women on an open plot near the link road leading towards the

National Highway. The complainant identified one of the three as the proclaimed offender, Sohbat alias Sobho Kalhoro. Upon seeing the police, the accused attempted to flee but was apprehended. The women, described as a mob, then arrived at the scene and tried to snatch the accused from police custody. The police party placed the arrested accused in their vehicle and began to move away, but the mob allegedly gave chase and opened fire on the police party. One of the bullets struck the arrested accused on his back/chest, and he later died while being taken to the Rural Health Centre (RHC), Ranipur. Consequent upon; case was registered *inter alia* on the above facts.

4. The investigation was conducted by the Investigating Officer (I.O) who, after usual inquiry, twice submitted a final report under "A" class (recommending closure of the case against accused persons). However, that report was treated as interim, and the Civil Judge & Judicial Magistrate, Sobhodero at Ranipur, directed the I.O. to submit a progress report in the matter. Thereafter, the I.O. recorded statements under Section 161 Cr.P.C of private witnesses Jalal Kalhoro and Muhammad Ramzan on 13.09.2023, and of Mst. Zaibul Khatoon, Mst. Zahida, and Azizullah on 30.10.2023, in compliance with an order dated 08.08.2023 passed by the Additional Sessions Judge/Ex-Officio Justice of Peace, Gambat, in Criminal Miscellaneous Application No.3814/2023. After further investigation, the I.O again submitted a final report under "A" Class, but the learned Magistrate took cognizance of the offence against, *inter alia*, SIP Sadique Kalhoro (the complainant), HC Qurban Ali Kalhoro, ASI Muhammad Maroof, PC Ashique Ali, PC Noorullah, and five unidentified accused persons.

5. Learned counsel for the applicants has urged that the names of the applicants do not appear in the FIR at all. Their names were introduced only at a later stage, with considerable delay, in the Section 161 Cr.P.C.

statements of the prosecution witnesses. Specifically, the names of the applicants first surfaced in the statements of Jalal Kalhoro and Muhammad Ramzan recorded on 13.09.2023, and later in the statements of Mst. Zaibul Khatoon, Mst. Zahida, and Azizullah recorded on 30.10.2023. This, according to the applicants, raises serious doubts about the credibility and spontaneity of the prosecution case.

6. It is further contended that after the usual course of investigation, the I.O. twice opined that the case should be disposed of under "A" Class, i.e that there was no sufficient evidence to proceed against any accused. Despite this, cognizance was taken by the Magistrate solely on the basis of the aforesaid statements recorded under Section 161 Cr.P.C, which are not statements on oath and are not subject to cross-examination. The applicants argue that such a basis is legally insufficient to justify the initiation of criminal proceedings, especially in a case involving serious charges like murder.

7. Learned counsel has also highlighted that co-accused PC-Noorullah, who is similarly placed and faces identical allegations, has already been granted pre-arrest bail by the learned Additional Sessions Judge, Khairpur, vide order dated 28.06.2024, in Criminal Miscellaneous Application No.341/2024. In that very application, this Court had earlier disposed of the matter with directions to the I.O. to submit a final report under Section 173 Cr.P.C within four weeks, vide order dated 23.09.2024. The applicants submit that the principle of consistency and parity of treatment demands that they too be granted the same relief, as there is no material distinction in the nature of allegations or evidence against them and the co-accused.

8. It is further urged that the deceased, Sohbat alias Sobho Kalhoro, was a proclaimed offender involved in multiple FIRs and was absconding at

the relevant time. The prosecution witnesses, being closely related to the deceased, have a natural bias and motive to implicate the police personnel involved in his arrest. In this context, the applicants have placed reliance on the CDR records collected during the investigation, which, according to them, *prima facie* indicate that the witnesses named above were not present at the spot at the relevant time. This, they argue, further undermines the prosecution's case and supports the plea for bail.

9. *Lastly*, it is submitted that the case has already been challaned, and the applicants are no longer required for the purposes of investigation. They have been on interim pre-arrest bail for about eleven months, during which there has been no complaint of any misuse of the liberty granted. In such circumstances, the applicants contend that they have made out a strong case for the confirmation of pre-arrest bail.

10. Learned Deputy Prosecutor General, appearing for the State, has opposed the confirmation of bail, raising a serious objection on the nature of the incident. It is contended that the incident amounts to a "fake encounter" staged by the complainant police party. In support of this contention, reliance is placed on the postmortem report of the deceased, Sohbat alias Sobho Kalhoro, which reveals that he sustained two firearm injuries:

- *Injury No. 1: A lacerated punctured wound runs towards the anterior side of chest internally communicated to injury No.2, situated just medial to left scapular region, 4 cm away from the midline. The injury is circular in shape, sizing, blackening, ground tattooing marks, edges of wound are inverted (wound of entry).*
- *Injury No.2: A lacerated penetrating semi circular in shape of everted margins, no blackening and surging seen around the injury internally communicated to injury No.1 (wound of exit).*

11. The DPG argues that these findings establish that the deceased sustained firearm injuries from close range, whereas the prosecution theory, as set forth by the complainant SIP Sadique Ali Abbasi, is that the deceased was shot by a mob from a distance while the police party was moving away.

The discrepancy between the forensic evidence and the prosecution's version, according to the State, casts serious doubt on the veracity of the police narrative and suggests that the fatal shot was fired by the police themselves. On this ground, it is urged that the applicants, being members of the police party, are not entitled to the relief of pre-arrest bail. The Court has carefully considered the submissions of both sides, perused the FIR, the postmortem report, the statements recorded under Section 161 Cr.P.C, the orders passed by the lower courts, and the relevant provisions of law.

12. The *first* and most significant factor in the present case is that the names of the applicants do not appear in the FIR. Their names were introduced only in the Section 161 Cr.P.C statements of the prosecution witnesses, recorded on 13.09.2023 and 30.10.2023, i.e, after a considerable lapse of time from the date of the incident (23.06.2023). This delay, coupled with the absence of their names in the initial complaint, raises a legitimate question about the spontaneity and credibility of their inclusion in the case. As repeatedly held by superior courts, when names are added at a later stage in the investigation, especially in serious cases, it warrants a cautious approach before subjecting the accused to arrest.

13. *Secondly*, the Investigating Officer, after conducting the investigation, twice recommended that the case be disposed of under "A" class, i.e. that there was no sufficient evidence to proceed against any accused. This indicates that, at the investigative level, the I.O did not find any incriminating material against the applicants. The fact that cognizance was taken solely on the basis of unsworn statements under Section 161 Cr.P.C further weakens the prosecution's case at this stage. Such statements, while admissible for limited purposes, cannot by themselves form a solid foundation for denying bail, especially when they are inconsistent with the initial complaint and recorded with delay.

14. *Thirdly*, the case of co-accused PC-Noorullah, who faces identical allegations, is highly relevant. He has already been granted pre-arrest bail by the learned Additional Sessions Judge, Khairpur, on 28.06.2024. In the same set of facts and allegations, the denial of bail to the present applicants while granting it to a similarly situated co-accused would be arbitrary and contrary to the principle of consistency and equal treatment before the law. This Court has consistently held that where co-accused in the same case have been granted bail, the remaining accused are entitled to the same relief unless there are special circumstances justifying a different treatment, which are conspicuously absent here.

15. *Fourthly*, the applicants have placed on record material suggesting that the deceased, Sohbat alias Sobho Kalhoro, was a proclaimed offender involved in multiple FIRs and was absconding at the relevant time. The prosecution witnesses are closely related to him, which naturally raises questions about their impartiality and possible motive to implicate the police personnel involved in his arrest. In such circumstances, the Court cannot ignore the possibility that the applicants have been falsely implicated due to personal or familial bias.

16. *Fifthly*, the CDR records collected during the investigation, according to the applicants, *prima facie* show that the witnesses named above were not present at the spot at the relevant time. While this is a matter that will ultimately be decided at the trial, at the bail stage, such material, if credible on the face of it, must be given due weight. The prosecution has not produced any concrete evidence to rebut this claim or to establish the presence of the witnesses at the scene of the incident.

17. *Sixthly*, the case has already been challaned, and the applicants are no longer required for the purposes of investigation. They have been on interim pre-arrest bail for about eleven months, and there is no complaint or

material on record suggesting any misuse of the liberty granted. This is a strong factor in favour of confirming bail, as the purpose of bail is not to punish but to ensure the presence of the accused at the trial.

18. As for the State's contention that the incident amounts to a "fake encounter," this is a serious allegation that goes to the very root of the prosecution case. However, at the stage of pre-arrest bail, the Court is not called upon to finally determine whether the incident was a genuine encounter or a fake one. The question is whether the applicants have made out a case for further enquiry under Section 497(2) Cr.P.C. In the present case, the absence of their names in the FIR, the delay in naming them, the I.O's opinion for closure, the grant of bail to a similarly placed co-accused, the possibility of false implication, and the availability of *prima facie* exculpatory material (CDR records) collectively establish that the case of the applicants requires further enquiry.

19. In view of the above discussion, the Court is satisfied that the applicants have succeeded in making out a case for further enquiry as envisaged under Section 497(2) Cr.P.C. The interim pre-arrest bail granted to the applicants on 27.01.2025 is accordingly confirmed on the same terms and conditions, vide short order dated 22.12.2025, and these are the reasons for the same.

20. It is, however, clarified that the observations made herein are purely tentative and are confined to the limited purpose of granting pre-arrest bail. They shall not prejudice the merits of the case at the trial stage, where the prosecution will have the opportunity to prove its case beyond reasonable doubt in accordance with law.

J U D G E