

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Cr. Bail Appl. No. S- 448 of 2024

Nizamuddin Khoso and another

V E R S U S

The State

SINDH HIGH COURT

Composition of Bench Before **Mr. Justice Muhammad Saleem Jessar**

Single/D.B.

Dates of Hearing: 19.05.2025

Decided on 19.05.2025

(a) Judgment approved for
Reporting

YES

NO

19.5.2025

C E R T I F I C A T E

Certified that the judgment / Order is based upon or enunciates a principle of law / decides a question of law which is of first impression / distinguishes/ over-rules/ reverses/ explains a previous decision.

Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used. The Reader must attach it to the top of the first page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is Approved for reporting.

(iv) Those directions which are not to be used should be deleted

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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Cr. Bail Appln. No S- 448 of 2024.

Date of hearing

Order with signature of Judge.

1. For orders on office objection.
2. For hearing of bail application

Applicants : Nizamuddin Khoso & another,
through M/s Ashique Ali Jatoi and Naseer Ahmed
Wagan, advocates a/w applicants (on bail)

The State : Through Mr. Ali Anwar Kandhro, Addl. P.G.

Complainant : Through Mr. Farooque Ahmed Gaad, Advocate.


Date of hearing : 19.05.2025

Date of Decision : 19.05.2025

ORDER.

Muhammad Saleem Jessar, J.- Through this application, applicants Nizamuddin son of Dhani Bux and Abdul Nabi son of Lakhe Dino, both by caste Khosa, seek their admission on pre-arrest bail in Crime No.120 of 2024, registered at P.S Nasirabad, for offences under Sections 302, 34, PPC. The case has been challaned, which is now pending for trial before the Court of Additional Sessions Judge-II, Kamber vide Sessions Case No.421/2024 re-The State v. Sadam Khoso & others. The applicants preferred their bail plea before the Court below, which by means of order dated 07.08.2024 was declined; hence, this application has been maintained.

2. The crux of the prosecution case is that the applicants along with absconding co-accused Sadam had a grudge with the complainant party, therefore, the applicants along with co-accused Sadam had come on the place of incident on 23.07.2024, at 4.00 p.m. and co-accused Sadam in his anger in order to commit his *Qatl-e-Amd* had caused *danda* blow to father of complainant, namely, Mashooque Ali on his head. Upon receipt of such injury, Mashooque Ali fell down and the blood started oozing, while remaining accused by pointing their weapons were standing over there.



3. Learned Counsel for the applicants submits that though the applicants are nominated in the FIR and have been shown duly armed with *danda* and pistol, yet they are not shown to have used the same nor any overt act is assigned to them except their presence. He further submits that the FIR is delayed for about 05 days, for which no plausible explanation has been furnished; besides, the accused after furnishing surety before this Court have joined the trial proceedings, therefore, the case against them requires further enquiry. He, therefore, submits that the interim pre-arrest bail granted to the applicants may be confirmed.

4. Pursuant to directions the trial court has furnished the progress report vide its office letter bearing No.738/2025, dated 21.04.2025, which reveals that the charge against the accused was framed on 12.10.2024. Per progress report, both the parties are seemingly involved in getting the case registered adjourned on different counts. In support of his contentions, learned Counsel placed his reliance upon the cases reported as *Muhammad Sadiq v. The State* (1996 SCMR 1654), *Faraz Akram v. The State* (1999 SCMR 1360), *Nazar Muhammad v. The State* (2012 PCr.LJ 430) and *Jahanzeb v. The State* (2021 SCMR 63).

5. Learned Addl. P.G. submits; the main role of causing injuries, which were proved fatal for the deceased, have been assigned to co-accused Sadam, who is absconding. As far as applicants are concerned, except mere their presence no overt act or specific role has been assigned to them. Therefore, the case against them requires further enquiry; hence, he does not oppose the bail application.

6. Mr. Farooque Ahmed Gaad, learned Counsel for the complainant, opposes the bail application, on the ground that after furnishing surety before this Court, the accused have attempted to misuse the concession extended to them and to such effect a complaint was preferred by the complainant before the appropriate forum, yet has not been entertained in consonance with the law.

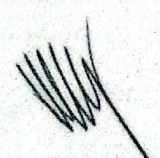
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however, submits the complainant was also injured by the accused, therefore, he made complaint before this Court on 22.01.2025, whereby the accused were specifically forbidden not to attempt to approach the complainant directly or indirectly. He further submits that the complainant has moved an application before the Justice of Peace seeking directions for registration of his case/FIR, which is still pending adjudication.

7. Heard. Record perused.

8. Admittedly, the incident, as is evident from FIR, has taken place on 23.07.2024, whereas the report thereof was lodged on 28.07.2024; though the distance between the police station and place of occurrence is only 01 kilometer and no plausible explanation has been furnished by the prosecution for such an inordinate delay. Though the delay in criminal cases has not been always critical or against the prosecution; however, when it is not explained plausibly, benefit of same must be given or extended to the accused, particularly at bail stage. Per contents of FIR, the applicants were shown duly armed with *danda* and pistol; however, had not used the same. Even no *lalkara* is attributed to them. Co-accused Saddam, who allegedly had caused *danda* blow to the father of complainant on his head and subsequently it proved to be fatal for his life, has not been arrested so far and is still at large being absconder. The accusation against the applicants in view of the contents of FIR is yet to be established by the prosecution after recording evidence. As admitted, the parties are at loggerheads due to enmity of *karo-kari/siyah-kari* (adventurous), as the niece of accused Nizamuddin, namely, Yasmeen was abducted by nephew of complainant, namely, Muzamil and therefore due to such unceremonial marriage of the girl had created/developed animosity between them; hence, the enmity being double-edged weapon cuts routes of either side; thus establishes the basic ingredients for grant of pre-arrest bail, as held by the Hon'ble Supreme Court of Pakistan in the case reported as *Rana Muhammad Arshad v. The State* (PLD 2009 SC 427).



9. Accordingly and in view of above as well as in view of citations relied upon by learned Counsel for the applicants, the case against the applicants requires further enquiry within meaning of Sub-section(2) to Section 497, Cr.PC. Consequently, instant bail application is allowed, Interim pre-arrest bail earlier granted to the applicants is hereby confirmed on same terms and conditions.

10. Since the charge against the accused has been framed, therefore, both parties present are directed to continue their appearance before the trial Court on each and every date and the trial court shall not grant adjournment to either side on any technical or flimsy ground. In case the accused may misuse the concession extended to them, the trial Court would be competent to take legal action against them or their surety according to law.

11. The observations recorded above are tentative in nature, which shall not influence the trial Court, in any manner, during the trial proceedings.

JUL 2018

Qazi Tahir