

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

(1) Cr.Bail Appln. No 5-700 of 2024
(2) Cr. Bail Appln. No.5-701 of 2024
(3) Cr. Bail Appln. No.5-513 of 2024
(4) Cr.Bail Appln. No.5-574 of 2024

Faqir Muhammad @ Faqiro Lakhair & Ors Versus The State

SINDH HIGH COURT

Composition of Bench Before Mr. Justice Muhammad Saleem Jessar. Single/ D.B. ✓

Dates of Hearing: 07/04/2025

Decided on: 07/04/2025

(a) Judgment approved for
Reporting

YES
 NO *8/4/25*

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 be 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.

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
(1) 1st Cr. Bail Appln. No. S-700 of 2024
(2) 1st Cr. Bail Appln. No. S-701 of 2024
(3) Cr. Bail Appln. No. S- 513 of 2024
(4) 1st Cr. Bail Appln. No. S-574 of 2024

Applicant (Cr. B. As. Nos. 700 & 701 of 2024)	: Faqir Muhammad @ Faqiro Lakhair(on bail), through Mr. Abdul Rasheed Pathan, Advocate
Applicant (Cr. B. A. No 513/2024)	: Haji Bashir @ Bashir Ahmed, through M/s Ashique Ali Jatoi and Naseer Ahmed Wagan, Advocates.
Applicant (Cr. B. A. No. 574/2024)	: Ghulam Nabi Magsi, through Mr. Muhamram Ali Junejo, Advocate.
The State	: Through Mr. Ali Anwar Kandhro, Addl. Prosecutor General, Sindh.
Complainant	: Khalid Hussain Mallah, through Mr. Sher Ali Chandio, Advocate.
Date of hearing	: <u>07.04.2025.</u>
Date of Decision	: <u>07.04.2025.</u>

ORDER.

Muhammad Saleem Jessar, J. - By this common order, I intend to dispose of captioned bail applications, as common questions of law and facts are involved.

2. The applicants preferred respective bail pleas before the Court below; however, their requests were turned down by way of orders dated 30.09.2024, 28.08.2024 and 23.09.2024 respectively; hence, these applications have been maintained.

3. As reported, the case has been challaned, which is now pending for trial before the Court II-Additional Sessions Judge, Dadu, vide Sessions Case No 197/2025, re-The State v. Sher @ Ali Sher Magsi & others.

4. In an unfortunate incident that occurred on 29.6.2024, one Ghulam Shabir Mallah(the deceased) lost his life at the hands of accused Aamir Magsi (since

absconding), whereas, accused Asim caused firearm injury through his rifle to injured PW Abdul Hakeem. Accused Haji Bashir *alias* Bashir Ahmed caused butt blows to PW Mehrab on his head and remaining accused had allegedly made straight fires upon the complainant party aims to commit their *qatl-i-amd*; however, the fires so made went missing.

5. Learned Counsel for the applicants submit that though the applicants are nominated in the FIR, yet role attributed to them is of ineffective firing, except the role of accused Haji Bashir *alias* Bashir Ahmed, who allegedly caused butt blows to PW Mehrab on his head, but injury so sustained has been declared by the MLO as *Shajjah-i-Khaffifah* punishable u/s 337-A(i), PPC; hence, is bailable. They further submit that the challan of the case had been submitted on 21.09.2024; however, on an application made by accused Faqeero to DIGP Hyderabad on 13.11.2024 re-investigation of the case was conducted by DSP, who on conclusion of the same submitted report before the trial court on 25.2.2025 recommending disposal of the case under cancelled "C" class to the extent of present applicants; whereas, evidence was collected against main accused Aamir Magsi and Asim. They also argued that co-accused Sher *alias* Sher Ali and Amjad Ali have been admitted to pre-arrest bail by the Court below on the same footing, therefore, case of present applicants is at par with them; hence, submit that case against the applicants requires further enquiry, therefore, by granting these bail applications they may be admitted to bail. In support of their contentions they places their reliance on the cases reported as *Meeran Bux v. The State (PLD 1989 Supreme Court 347)* *Mumtaz Hussain v. The State (1996 SCMR 1125)*, *Attallah v. The State (1999 SCMR 1320)*, *Shah Nawaz v. The State (2008 SCMR 1436)*, *Abid v. The State (2016 SCMR 907)*, *Wajid Ali v. The State (2017 SCMR 116)* and an unreported order dated 26.12.2024 passed by this Court in Cr. B.A. No.S-616/2024.

6. Learned Addl. P.G. appearing for the State in view of above position of the case does not oppose the bail applications.

7. On the other hand, Mr. Sher Ali Chandio, learned Counsel for the complainant, vehemently opposes the applications, on the grounds that accused Haji Bashir *alias* Bashir Ahmed and Ghulam Nabi had filed pre-arrest bail applications

before the Court below, which were declined and they were arrested by the police. During investigation, both accused had produced crime weapons, for which separate cases in terms of Section 23(1)(A), Sindh Arms Act, 2013 have been registered against them, which are also pending for trial before the same Court. As far as accused Faqir Muhammad is concerned, at the time of his arrest, he while seeing the police party had thrown the offensive weapon and decamped from the scene and the weapon left over by him had also been taken into custody by the police, which has been made part and parcel of the case property in this case. He while rebutting the contentions of learned Counsel for the applicants, submits that the enmity ground taken by them is not much of consequence, as co-accused Aamir had entered into Nikah with daughter of injured Abdul Hakeem Narejo namely, Mst. Mehtab, whereas deceased Ghulam Shabir Mallah had no concern or nexus with said lady; even, the accused have committed his murder brutally, therefore, they are not entitled for the concession of bail. He also submits that one Abdul Nabi, brother of accused Ghulam Nabi, had got a false criminal case registered vide Crime No.42/2024 at PS Shah Panjo Sultan against the complainant party only to exert illegal pressure upon them, so that they may not pursue proceedings of instant (main) case; hence, such conduct on the part of accused tantamount to misuse of the concession of bail extended to them. He therefore, submits that by dismissing these bail application, accused Faqir Muhammad may be taken into custody and trial Court may be directed to expedite the trial and conclude the same within shortest possible time. As far report by subsequent investigating officer (2nd I.O) before the trial Court is concerned, learned Counsel for the complainant submits that though the scope of re-investigation is open, yet once the challan was submitted and trial Court has taken cognizance against the accused; hence, the re-investigation of the case was not only illegal but will not have any adverse impact on the prosecution case at such belated stage.

8. Heard. Record perused.

9. Admittedly, the main role of causing firearm injury to deceased Ghulam Shabir Mallah has been attributed to co-accused Aamir Magri, who is absconding, whereas co-accused Asim had also caused rifle shot to PW Abdul Hakeem, he has not been arrested by the police so far. As far role of present applicants is concerned, all of them had allegedly made straight fires upon the complainant party aims to commit their

qatl-i-amd; however, none of the fires was proved to be effective. As far as role of accused Haji Bashir @ Bashir Ahmed is concerned, he allegedly caused weapon butt blow to PW Mehrab on his head, but said injury has been declared as *Shajjah-i-Khaffah* punishable u/s 337-A(i), PPC and is bailable. Co-accused having similar role have already been bailed out by the trial Court, therefore, case of applicants is at par with them; hence, they deserve to be extended constant treatment. Since, the applicants have not been attributed any overt act or injury to deceased; hence, case against them in view of peculiar circumstances of the case as well as citations quoted above requires further enquiry within meaning of sub-section (2) to Section 497, Cr.PC. It is settled law that opinion of police is not binding upon the Courts; hence, the subsequent investigation conducted by the DSP upon directions of the DIGP at belated stage of trial may not vitiate the evidentiary value of the prosecution case, which has already been submitted before the trial Court, where cognizance has also been taken against all the accused; hence, in view of the earlier investigation, sufficient evidence as well as material was collected which is to be adduced by the prosecution at the time of trial and it is upto the trial Court to decide whether the second investigation so conducted is according to law or otherwise.

10. The upshot of the above discussion is that the applicants have made out their good *prima facie* case for grant of bail. Consequently, all these bail applications are hereby allowed; resultantly, the interim pre-arrest bail granted to applicant Faqir Muhammad @ Faqiro Lakhair on 20.11.2024 is hereby confirmed on same terms and conditions; whereas, applicants Haji Bashir @ Bashir Ahmed and Ghulam Nabi, both by caste Magsi, are directed to be released on bail subject to furnishing their surety in the sum of Rs.200,000/- (rupees two lac) each and P.R. Bonds in the like amount to the satisfaction of trial Court.

11. It is needless to mention here that the observations, if any, recorded hereinabove are tentative in nature, which shall not influence the trial Court, in any manner, while dealing with trial of the case.

Qazi Tahir PA/

JUDGE