

HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Criminal Bail Application No.S-79 of 2026

Present:

Justice Khalid Hussain Shahani.

Applicants: 1. Siddique @ Muhammad s/o Togachi.
2. Ashraf s/o Muhammad Siddique.
3. Taj Muhammad s/o Rahib.
4. Abu Bakar s/o Muhammad Siddique.
Through Mr. Vasand Thari, Advocate.

Complainant: Missri s/o Jumoon Samoon.
Through Mr. Zaheer-Ud-Din Nohri, Advocate.

Respondent: The State.
Through Mr. Ghulam Abbas Dalwani, D.P.G.

Date of hearing: 06.07.2026

Date of Order: 06.07.2026

ORDER

Khalid Hussain Shahani, J.— Through the instant application, the applicants have sought post-arrest bail in a case bearing crime No. 66 of 2025 registered at Police Station Diplo for offences under sections 302, 147, 148, 149, 504 and 114, P.P.C. Their earlier application was declined by the learned Additional Sessions Judge-I/Judge, MCTC, Tharparkar at Mithi, vide order dated 23.12.2025.

2. Briefly stated, the prosecution case as set out in the F.I.R. is that on 11.11.2025 at about 9:30 a.m., when the complainant party was allegedly tracing the footprints of a missing goat, they found the deceased Yousif near a jungle situated to the south of the village. The nominated accused allegedly suspected him of theft. Co-accused Sahib is specifically alleged to have inflicted a hatchet blow on the left side of the head of the deceased. Present applicant Ashraf allegedly caught hold

of the deceased; applicant Siddique alias Muhammad allegedly raised lalkara; while applicants Taj Muhammad and Abu Bakar were assigned omnibus allegations of causing hatchet and lathi blows. The injured was shifted for treatment and later succumbed to the injury. The F.I.R. was thereafter lodged.

3. Learned counsel for the applicants contended that the applicants are innocent and have been falsely involved due to previous enmity and deliberation. It was argued that there is a delay in lodgment of the F.I.R.; that the fatal injury is attributed specifically to co-accused Sahib alone; that the roles of present applicants, particularly Taj Muhammad and Abu Bakar, are general and no distinct injury has been assigned to them; that Siddique alias Muhammad is attributed only the role of instigation; and that Ashraf is alleged merely to have caught hold of the deceased. It was further submitted that the post-mortem report reflects only one injury on the vital part, that challan has already been submitted, charge has been framed, yet not a single witness has been examined for several months, and that the liability of the present applicants, if any, requires deeper probe at trial. Reliance was placed upon *Binyameen v. The State through A.G. Khyber Pakhtunkhwa and another* (2026 SCMR 99), *Nasar v. The State and others* (2017 SCMR 130), *Adil Zaman v. The State* (2022 YLR Note 104), *Mubarak v. The State* (2018 YLR 1655), and *Muhammad Khan v. Muhammad Fayyaz Khan and another* (2016 MLD 818).

4. Conversely, learned counsel for the complainant opposed the application and submitted that the applicants are specifically nominated in the F.I.R.; that they formed an unlawful assembly and, in prosecution of their common object, participated in the occurrence; that the ocular account is confidence-inspiring; and that the recovery of weapons during

investigation lends support to the prosecution case. Reliance was placed upon *Shahzadi Sonia v. The State* (2014 PCrLJ 630), *Shoukat v. The State* (2010 MLD 1137), *Ummar Hayat and another v. The State* (2009 PCrLJ 1058), *Irfan Khan v. The State* (2009 MLD 120), and *Muhammad Rafique and 4 others v. The State through Advocate General* (2008 PCrLJ 351).

5. Learned Deputy Prosecutor General adopted the arguments advanced on behalf of the complainant and sought dismissal of the application.

6. Heard. Record perused with the able assistance of learned counsel for the parties.

7. At bail stage, the Court is required to make only a tentative assessment of the material collected by the prosecution and to see whether there exist reasonable grounds to believe that the accused is guilty of an offence falling within the prohibitory clause of section 497, Cr.P.C., or whether the case calls for further inquiry within the meaning of subsection (2) thereof. The deeper appreciation of evidence, determination of credibility, and final assessment of vicarious liability are matters to be undertaken by the trial Court after recording evidence.

8. The first and most significant feature of the present case is that, according to the F.I.R. itself, the fatal hatchet blow on the head of the deceased has been assigned specifically to co-accused Sahib, who is not before this Court through the present application. The medical evidence, as referred to by learned counsel, also indicates one head injury as the cause of death. So far as present applicants Taj Muhammad and Abu Bakar are concerned, the allegations against them are general

in nature and no specific injury on any particular part of the body has been assigned to either of them. Applicant Siddique alias Muhammad has been attributed only the role of instigation, whereas applicant Ashraf is alleged merely to have caught hold of the deceased. Whether these applicants shared common intention or common object to the extent of the principal assailant, and whether vicarious liability under sections 34 or 149, P.P.C. is ultimately attracted, are matters which can be determined only after full-dressed trial.

9. In *Binyameen v. The State through A.G. Khyber Pakhtunkhwa and another* (2026 SCMR 99), the superior Court has been understood to hold that where the exact extent of an accused person's vicarious liability is dependent upon proof to be recorded during trial, the question is to be resolved after evidence and not through a deeper appraisal at bail stage. The principle emerging therefrom supports the view that where no fatal injury is attributed to a particular accused and his precise role remains to be measured after trial, the matter may fall within the ambit of further inquiry.

10. Learned counsel for the applicants also relied upon *Nasar v. The State and others* (2017 SCMR 130). Although the full text of that authority has not been reproduced in the material presently available, it is repeatedly cited in bail jurisprudence for the principle that where attribution is doubtful, role is distinguishable, and the prosecution case requires further probe regarding individual responsibility, the concession of bail may be extended under section 497(2), Cr.P.C. In the present case, the said principle has relevance because the individual role of each applicant is materially distinct from that of co-accused Sahib, to whom the fatal blow is specifically attributed.

11. The citation of Adil Zaman v. The State (2022 YLR Note 104) appears to have been made to reinforce the proposition that where a general role is assigned and no specific injury is attributed; the case of such accused may require further inquiry. Likewise, Mubarak v. The State (2018 YLR 1655) and Muhammad Khan v. Muhammad Fayyaz Khan and another (2016 MLD 818) were cited to support the settled approach that, at bail stage, the Court may consider the distinction between specific and general roles, the absence of clear attribution of fatal injury, and the necessity of withholding any final expression on disputed facts until trial. Those authorities, read in that limited tentative context, do not detract from the basic rule that bail in a case of further inquiry is not a matter of discretion alone but a statutory concession.

12. As to the authorities cited by the learned counsel for the complainant, there can be no cavil with the proposition that mere generality of role is not always sufficient for grant of bail where the attending circumstances prima facie shows active participation in a murderous assault, especially in cases of unlawful assembly and common object. The cases of Shahzadi Sonia, Shoukat, Ummar Hayat, Irfan Khan, and Muhammad Rafique were cited to stress the rigor applicable to offences of murder and the principle that where ocular account is confidence-inspiring and the accused are specifically nominated, bail may be declined at the tentative stage. However, each bail matter turns on its own facts, and precedents in bail jurisdiction are applied with close attention to the nature of attribution, medical support, recoveries, and the progress of trial.

13. In the present matter, the prosecution case, even if taken at its face value for purposes of tentative assessment, shows material distinction

between the role of co-accused Sahib and the roles assigned to the present applicants. The allegation against Taj Muhammad and Abu Bakar is omnibus; against Siddique alias Muhammad it is confined to instigation; and against Ashraf it is one of catching hold. Whether such roles were in fact played, whether they were sufficient to attract constructive liability for murder, and whether the prosecution witnesses will maintain a consistent account before the trial Court are all questions that still await recording of evidence.

14. Another important circumstance is that the investigation has already been completed, challan has been submitted, and charge has been framed. Despite lapse of considerable time, no prosecution witness has yet been examined. The applicants are no longer required for the purpose of investigation. Protracted incarceration before conclusion of trial, particularly where the exact degree of culpability is yet to be determined, is also a relevant consideration while examining whether a case falls within further inquiry.

15. At this stage, the alleged recoveries cannot by themselves conclusively settle the question of guilt, particularly when the prosecution case itself assigns the fatal injury to another accused specifically. The evidentiary worth, legal admissibility, and corroborative value of such recoveries are matters to be examined by the learned trial Court after the parties lead evidence.

16. It is a settled principle that bail cannot be withheld as a mode of punishment. Where the case of an accused requires further inquiry into his guilt, the concession of bail follows as a statutory right under section 497(2), Cr.P.C. Upon tentative assessment of the record, this Court is of

the view that the case of the present applicants squarely calls for such further inquiry.

17. For the foregoing reasons, the instant bail application is allowed. The applicants are admitted to post-arrest bail, subject to furnishing solvent surety in the sum of Rs.500,000 each and personal recognizance bond in the like amount to the satisfaction of the learned trial Court. Needless to observe that the observations made herein are purely tentative in nature and shall not influence the learned trial Court in deciding the case strictly in accordance with law and the evidence that may come on record.

JUDGE

Adnan Ashraf Nizamani