

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Cr. Bail Application No. S-172 of 2026

Applicants: 1. Gulsher S/o Muharram Khan Chandio,
2. Mukhtiar Rajput S/o Muhammad Irshad Rajput,
3. Allah Bachayo S/o Muhammad Hassan Panhwar,
Through Mr. Sikandar Ali Kolachi, Advocate.

Cr. Bail Application No. S-311 of 2026

Applicant: Rafique Ahmed S/o Hakim Ali,
Through Mr. Farhan Ahmed Bozdar, Advocate.

Cr. Bail Application No. S-312 of 2026

Applicant: Noor Ali S/o Noor Muhammad,
Through Mr. Farhan Ahmed Bozdar, Advocate.

Complainants: Jam Hyder Zaman and Jam Sibtain Sultan,
Through Mr. Sameeullah Rind, Advocate.

The State: *Through* Mr. Neel Parkash, D.P.G &
Mr. Muhammad Sabir, D.A.G.

Date of Hearing: 22.07.2026

Date of Order: 28.07.2026

ORDER

Khalid Hussain Shahani, J. – Applicants name above seek their enlargement on post-arrest bail in a case bearing Crime No. 26/2025, registered at P.S. FIA Composite Circle, Shaheed Benazirabad, for offences under Sections 8 and 9 of the Torture and Custodial Death (Prevention and Punishment) Act, 2022, read with Sections 302, 34, 109 and 342 P.P.C. The applications arise consequent upon rejection of bail by the learned Trial Court vide orders dated 26.03.2026, 16.04.2026 and 29.04.2026 respectively, thereby attracting the concurrent jurisdiction vested in this Court.

2. The prosecutorial narrative, as unfolded in F.I.R. No. 26/2025, avers that on 10.11.2025 the deceased, Jam Aziz Hassan Jakhro, was taken into custody by functionaries of Police Station Shahdadpur without lawful sanction and was, whilst so detained, subjected to physical torture culminating in his death. The matter, upon reference by the learned Judicial Magistrate to the

competent FIA authorities, and upon due sanction obtained therefrom, crystallized into the present F.I.R., implicating several police officials together with the present applicants.

3. Learned counsel for the applicants have contended that no specific role is attributable to the applicants, that the case is one warranting further inquiry, and that the complainant has expressed no objection qua applicants Gulsher, Mukhtiar Rajput and Allah Bachayo. Reliance has further been placed upon the rule of consistency, co-accused Tanveer Hussain and Ghulam Shabbir Dalwani having already been enlarged on bail by this Court vide order dated 16.03.2026.

4. Learned counsel for the complainant, as also the learned D.P.G. and D.A.G. for the State, have adopted a differentiated stance: no objection is raised qua Gulsher, Mukhtiar Rajput and Allah Bachayo, but the applications of Rafique Ahmed and Noor Ali are resisted on the ground of sufficient incriminating material connecting them to the offence.

5. I have heard learned counsel for the respective parties at length and subjected the record to anxious and searching scrutiny, mindful throughout that at the bail stage the exercise is confined to the formation of a tentative opinion, deeper appreciation of evidence being the exclusive province of the learned Trial Court upon culmination of trial.

6. It is not disputed that the F.I.R. was lodged after an unexplained lapse of about forty-seven hours, notwithstanding that the complainant party comprised close relatives of the deceased fully cognizant of the circumstances attending his custody and death. Delay unexplained in the lodging of an F.I.R. opens the door to deliberation and embellishment, and cannot be lightly disregarded at the bail stage. Reliance is placed on *Qari Farhad*¹, where similar delay, coupled with doubtful identification, was held to attract Section 497(2), Cr.P.C.

7. Equally material is the fact that none of the applicants was nominated in the F.I.R.; their names surfaced only during subsequent investigation. Implication emerging at a later investigative stage, absent contemporaneous naming by an eyewitness-complainant, must be scrutinized with heightened caution and lends credence to the plea of false implication.

¹ *Qari Farhad v. The State* (B.A. No. 559-B of 2025, Sindh High Court)

8. The investigation remains incomplete, no report under Section 173, Cr.P.C. having yet been submitted; only an interim report exists. An unconcluded investigation cannot sustain continued deprivation of liberty where the roles attributed remain fluid. It has further been brought to notice that the Honourable Supreme Court has issued notices in connected bail-cancellation proceedings touching this very case, rendering the matter sub judice before the Apex Court and counselling restraint against any premature determination herein.

9. On the rule of consistency: it is settled that where the case of an accused is indistinguishable in material particulars from that of a co-accused already granted bail, parity cannot be denied merely for want of a common application number. Reliance is placed on *Muhammad Nadim*², *Saeed Ullah and others*³, and *Sikandar Hayat*⁴. The caveat entered in *Bakhti Rahman*⁵, where parity was denied owing to a distinguishable fatal role does not detract from the applicants' case, the prosecution having failed, despite specific query, to identify any distinguishing feature between the applicants and co-accused Ghulam Shabbir Dalwani and Tanveer Hussain, already enlarged on bail.

10. Qua applicants Rafique Ahmed and Noor Ali specifically, an independent tentative assessment discloses no greater culpability than that attributed to the applicants against whom even the complainant raises no objection. Mere assertion of "sufficient incriminating material," unaccompanied by particulars capable of verification, cannot defeat an otherwise well-founded plea of parity.

11. Having regard to the cumulative effect of the unexplained delay in lodging, the absence of nomination of the applicants in the F.I.R., the incomplete state of investigation, the pendency of connected proceedings before the Honorable Supreme Court, and the absence of any distinguishing feature vis-à-vis co-accused already bailed out, I am satisfied that the case of each applicant falls squarely within the contemplation of Section 497(2), Cr.P.C. Gravity of accusation, howsoever grave, remains a relevant but not determinative consideration and cannot substitute for tangible, corroborated evidence.

² *Muhammad Nadim v. The State* (2023 SCMR 184)

³ *Saeed Ullah and others v. The State* (2023 SCMR 1397)

⁴ *Sikandar Hayat v. The State* (2022 SCMR 198)

⁵ *Bakhti Rahman v. The State* (2023 SCMR 1068)

12. Bail at this stage does not partake of an adjudication upon guilt; it is an exercise in balancing the liberty of the subject against the legitimate interest of the State, and that balance, on the facts noted, inclines decisively in favor of the applicants.

13. For the foregoing reasons, the instant bail applications are allowed. The applicants shall be released on furnishing solvent surety in the sum of Rs. 100,000/- (Rupees One Lac only) each, together with a P.R. Bond in the like amount, to the satisfaction of the learned Trial Court. It is clarified that the observations recorded above are of a tentative nature only and shall not prejudice either party at trial.

The applications stand disposed of in the above terms.

J U D G E

Adnan Ashraf Nizamani