

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.3259 of 2025

Applicant : Attaullah @ Atta Hussain,
Through: Mr. Muhammad Rahib
Lakho, advocate.

The State : The State: Through Ms. Amna Ansari,
Additional Prosecutor General, Sindh

Date of hearing : 09.03.2026

Date of Order : 09.03.2026

ORDER

Jan Ali Junejo, J:-- Through this order, I intend to decide the instant post-arrest bail application filed under Section 497, Cr.P.C. by the applicant Attaullah @ Atta Hussain, who seeks his release in case arising out of FIR No.03/2025, registered at Police Station Garho, District Thatta, for the offence punishable under Sections 302/34, P.P.C. The earlier bail application of the applicant was declined by the learned 1st Additional Sessions Judge / Model Criminal Trial Court, Thatta, vide order dated 28.10.2025.

2. Briefly, as per contents of the FIR, complainant Hub Ali lodged the report on 09.02.2025 at about 01:00 a.m., stating that on 07.02.2025 at about 07:30 p.m., the applicant along with co-accused allegedly took the complainant party to the southern side of their landlord's land on the pretext of showing work, where co-accused Rajab Ali allegedly fired from a repeater at the deceased Bagh Ali, causing his death, while the present applicant and another co-accused allegedly caused butt blows with pistols. The motive behind the occurrence was stated to be a dispute over non-payment of

labour charges. After investigation, challan was submitted and the applicant is presently in judicial custody.

3. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated in this case; that the specific role of causing fatal firearm injury is attributed to co-accused Rajab Ali, while the present applicant has been assigned only a general and ineffective role of causing butt blows, which is not corroborated by the medical evidence as the postmortem report does not reflect any such injuries. He further argued that there is an unexplained delay of about 29 hours in lodging the FIR, which creates serious doubt and suggests deliberation and consultation. It was also contended that the alleged incident took place at night in darkness and no source of light has been disclosed, making identification doubtful. Learned counsel further submitted that no independent witness has been cited, recovery has been foisted, and material contradictions exist in the prosecution case, thus bringing the matter within the ambit of further inquiry. He prayed that the applicant be admitted to bail.

4. Conversely, learned Additional Prosecutor General opposed the bail application and argued that the applicant is specifically nominated in the FIR with an assigned role and has participated in the commission of the offence in furtherance of common intention. It was contended that the offence falls within the prohibitory clause of Section 497, Cr.P.C., and sufficient material is available on record connecting the applicant with the commission of the crime. Learned A.P.G. thus prayed for dismissal of the bail application.

5. I have considered the submissions advanced by learned counsel for the parties and have carefully examined the material available on record with their assistance. On a tentative assessment, it transpires that the specific role of causing the fatal firearm injury has been attributed to co-accused Rajab Ali, whereas the present applicant has been assigned a comparatively lesser role of inflicting butt blows with a pistol. Whether the fatal injury, which ultimately resulted in the death of the deceased, can be legally attributed to the present applicant on the basis of vicarious liability or common intention is a question that squarely falls within the domain of the learned trial Court and can only be determined after recording of evidence. The medical evidence, including the postmortem report, also requires thorough examination in juxtaposition with the ocular account to ascertain the true nature, seat, and cause of injuries, and its correlation with the role ascribed to the applicant. At this stage, such an exercise would amount to a deeper appreciation of evidence, which is not permissible. Furthermore, there is an admitted delay of about 29 hours in lodging the FIR. Although the prosecution has attempted to furnish an explanation for the said delay, yet the plausibility and veracity of such explanation cannot be conclusively adjudged at this stage and would require deeper scrutiny during trial, particularly in light of the possibility of deliberation or consultation. It is also noteworthy that the alleged occurrence took place during nighttime; however, no source of light has been disclosed in the FIR. Coupled with the prosecution's own assertion that the complainant party fled the scene due to darkness,

this circumstance prima facie creates doubt regarding the proper identification of the present applicant, which again calls for further inquiry. In view of the above circumstances, without delving into the merits of the case, I am of the tentative opinion that the case of the present applicant falls within the ambit of further inquiry.

6. Moreover, the role attributed to the applicant is distinguishable from that of the principal accused, who allegedly caused the fatal injury. The question whether the applicant shared common intention with the principal accused is a matter which requires deeper appreciation of evidence. It is a settled principle of law that if a case calls for further inquiry within the meaning of Section 497(2), Cr.P.C., the accused is entitled to the concession of bail. In the present case, tentative assessment of the material available on record suggests that the case of the applicant falls within the ambit of further inquiry. Reliance in this regard is placed on the case of *Bashir Ahmed and others v. The State and another* (2022 SCMR 1187), wherein the Honourable Supreme Court of Pakistan was pleased to hold that: "*Mere presence of an accused with an accused who commits the crime would not constitute his common intention unless there is an evidence referring to the criminal act of that accused committed in furtherance of common intention with the other accused*".

7. In view of the above discussion, the instant bail application is allowed. The applicant Attaullah @ Atta Hussain is admitted to bail subject to furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand only) and P.R. bond in the like

amount to the satisfaction of the learned trial Court. It is, however, clarified that all observations hereinabove are purely tentative and confined to the adjudication of the present bail application. Nothing stated in this Order shall be construed as an opinion on the merits of the case, and the trial Court shall proceed independently, uninfluenced by any observations contained herein. These are the detailed reasons for the short order dated 09.03.2026.

JUDGE