

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No.S-550 of 2026

Crl. Bail Application No.S-625 of 2026

Applicant : Khan Muhammad (**Crl.B.A.No.S-550 of 2026**)
through Mr. Ghulam Sarwar Halepoto,
Advocate.

Applicant : Khalid Hussain (**Crl.B.A.No.S-625 of 2026**)
through Mr. Azhar Ali Mazari, Advocate a/w
applicant.

Complainant : Mir Hazar Khan (Nemo)

Respondent : The State through Mr. Muhammad Raza
Katohar, Deputy Prosecutor General.

Date of Hearing : 14-09-2026
Date of Order : 18-09-2026

ORDER

TASNEEM SULTANA, J.- Through these Criminal Bail Applications, applicant Khan Muhammad seeks post-arrest bail, whereas applicant Khalid Hussain seeks pre-arrest bail, in Crime No.80 of 2026, registered at Police Station Kumb, District Khairpur, for an offence under Section 397, P.P.C., after their bail pleas were declined by the learned Additional Sessions Judge-I/MCTC, Khairpur, vide orders dated 25.05.2026 and 16.06.2026. Since both these bail applications arise out of the same crime, they are being decided through this common order.

2. The detailed facts of the case are already set out in the bail applications and the FIR and, therefore, need not be reproduced here.

3. Learned counsel for the applicants contended that the applicants are innocent and have falsely been implicated in the case with mala fide intention and ulterior motive; that their implication is the result of Shia-Sunni sectarian differences prevailing in the village; that the FIR was lodged after a delay of about ten days and, according to him, such delay shows consultation and deliberation; that the prosecution witnesses are closely related to the complainant and no independent person has been associated despite the occurrence allegedly having taken place on a public road in broad daylight; that neither the allegedly robbed motorcycle nor the cash amount or any weapon has been recovered from

either applicant; that neither the complainant nor the accompanying witnesses sustained any injury and, on that basis, learned counsel submitted that Sections 395 and 397, P.P.C. are not attracted and the case, at the most, would fall under Section 392, P.P.C.; that the offence does not fall within the prohibitory clause of Section 497(1), Cr.P.C.; and that, in these circumstances, the case requires further inquiry. Learned counsel further referred to the no-objection extended by the complainant before the learned Court below and prayed that applicant Khan Muhammad be admitted to post-arrest bail and the interim pre-arrest bail granted to applicant Khalid Hussain be confirmed.

4. Conversely, learned Deputy Prosecutor General opposed the applications and submitted that both applicants are nominated in the FIR with specific roles; that applicant Khan Muhammad is alleged to have taken away the complainant's motorcycle, while applicant Khalid Hussain is alleged to have taken Rs.35,000/- from his person at gunpoint; that the delay in lodging the FIR has been explained in the crime report; and that the subsequent no-objection extended by the complainant does not furnish a ground for grant of bail in a non-compoundable offence. He, therefore, prayed for dismissal of both applications.

5. Heard. Record perused.

6. It appears from the record that the applicants, along with their three co-accused, were allegedly armed with pistols and intercepted the complainant and his companions on the road. The accused allegedly took out their pistols, pointed the same towards the complainant party and signalled them to stop, whereupon they stopped due to fear of the weapons. Applicant Khan Muhammad is alleged to have taken the key and motorcycle of the complainant, whereas applicant Khalid Hussain is attributed the role of taking Rs.35,000/- from his pocket at gunpoint. Both applicants are specifically nominated with direct roles in the occurrence. Prima facie, the manner in which the occurrence has been alleged brings the case within the ambit of Section 397, P.P.C. No doubt, the offence under Section 397, P.P.C., carrying punishment with imprisonment for not less than seven years, does not fall within the prohibitory clause of Section 497(1), Cr.P.C.; however, exclusion of an offence from the prohibitory clause does not make the grant of bail automatic.

7. In the case of Shameel Ahmed v. The State (2009 SCMR 174), the Hon'ble Supreme Court observed that the grant of bail in cases not falling within

the prohibitory clause “*is not a rule of universal application*” and that each case has to be seen through its own facts and circumstances. Reference may also be made to the case of *Afzaal Ahmed v. The State* (2003 SCMR 573), wherein the Hon’ble Supreme Court observed as under:

“5. The mere fact that an offence did not fall within the prohibitory clause of section 497(1) of the Cr.P.C. did not mean that such an offence had become a bailable offence. The discretion still remained with the competent Court to consider whether a person accused of such an offence did or did not deserve the grant of bail in accordance with the established norms governing the exercise of such a power.....”

8. The occurrence allegedly took place on 21.04.2026, whereas the FIR was lodged on 01.05.2026. The complainant has furnished an explanation for the delay in the FIR itself by stating that, after returning to the village, he approached Rais Ilahi Bux Bugti, who was away, and upon his return narrated the occurrence to him, whereafter he proceeded to the police station. The complainant was accompanied by his brother and cousin at the relevant time and their relationship with him, by itself, does not render their presence doubtful. No motorcycle, cash amount or weapon is shown to have been recovered from the applicants; however, the absence of recovery, when considered alongside their nomination and the specific roles attributed to them, is not sufficient by itself to justify the concession of bail.

9. Learned counsel has also taken the plea that Sections 395 and 397, P.P.C. are not attracted, as neither the complainant nor the accompanying witnesses sustained any injury; according to him, the case, at the most, would fall under Section 392, P.P.C. Section 397, P.P.C., however, is not confined to actual infliction of grievous hurt; it also contemplates use of a deadly weapon at the time of committing robbery or dacoity. Likewise, causing injury is not an essential ingredient of dacoity; the relevant consideration is the conjoint commission or attempt to commit robbery by five or more persons. In the present case, the FIR alleges that five persons, all armed with pistols, intercepted the complainant party, pointed their weapons towards them and compelled them to stop, whereafter the motorcycle and cash were allegedly taken away. Mere absence of bodily injury, therefore, does not by itself support the plea that the occurrence must necessarily be confined to Section 392, P.P.C.

10. The complainant subsequently extended no-objection before the learned Court below. The offence under Section 397, P.P.C. is non-compoundable and

such no-objection cannot, by itself, furnish a legal basis for grant of bail. In the case of Naseer Ahmad v. The State (PLD 1997 SC 347), the Hon'ble Supreme Court observed as under:

“7....A trend has developed nowadays that eyewitnesses some times; take a somersault and give statements which are different from prosecution case and some times file affidavits also at the stage of hearing of bail applications of accused persons with intention of creating doubt in the case of prosecution to enable the accused to get bail. The Courts have to be very careful in such cases and see that bail applications are disposed of strictly according to law on merits keeping in view the distinction between tentative assessment and actual evaluation of evidence by the trial Court. It is the mind of the Court which is to be satisfied where about-turn of some of eyewitnesses in the manner stated above shakes up the whole prosecution case from the point of view of credibility of the remaining material. In that respect each case is to be decided on its own merits...”

The subsequent no-objection of the complainant, therefore, does not outweigh the material appearing against the applicants at this stage.

11. The plea of false implication on account of Shia-Sunni sectarian differences also remains unsupported by any material presently available on record from which it may prima facie be inferred that the criminal proceedings were initiated on account of such dispute or that the police acted at the instance of any person for that purpose. The circumstances appearing from the record, when considered cumulatively, do not bring the case of either applicant within the ambit of further inquiry under Section 497(2), Cr.P.C. Insofar as applicant Khalid Hussain seeks pre-arrest bail, no material has been shown from which mala fide or ulterior motive behind his intended arrest may prima facie be inferred.

12. In view of the above facts and circumstances, the applicants have failed to make out a case for grant of post-arrest and pre-arrest bail, respectively. Consequently, both bail applications are dismissed. The interim pre-arrest bail granted to applicant Khalid Hussain vide order dated 30.06.2026 is recalled.

13. Needless to mention that the observations made hereinabove are tentative in nature and shall not influence the learned trial Court while deciding the case on merits.

Office to place a signed copy of this order in captioned connected matter.

J U D G E

Ahmad