

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Bail Appln. No.D-176 of 2026

Applicant

Asghar Ali Lund. : through M/s Qurban Ali Malano,
Mujeeb-ur-Rehman Malano

The State : through Syed Sardar Ali Shah,
Addl.P.G. Sindh.

Complainant,
Mst. Pathani Gadani : through Mr. Salahuddin Panhwar,
Advocate.

Date of hearing. : 25.08.2026

Date of Order. : 09.09.2026

ORDER

Muhammad Faisal Kamal Alam, J:- Through this Application, Applicant Asghar Ali Son of Hoat Khan Lund seeks Post-Arrest bail in Crime No.133 of 2024, Police Station- Mirpur Mathelo, for the Offences under Sections 302, 33H(ii), 120-B, 506/2, 34 of Pakistan Penal Code [PPC] and Section 7 of the Anti-Terrorism Act, 1997 [ATA].

2. The earlier Bail Application filed before the Anti-Terrorism Court [Trial Court] at Ghotki/Mirpur Mathelo, was dismissed by the Order dated 9-6-2026.

3. The contents of the FIR in above Crime is not required to be reproduced here.

4. M/s Qurban Ali and Mujeeb-ur-Rehman Malano Advocates, representing the Applicant/accused, argued that the Applicant/accused has been falsely implicated in the case; the Applicant/accused was neither nominated in the FIR, nor Statement recorded under Section 161 of the Criminal Procedure Code [Cr.P.C] on 29-5-2024, but in the further statement of the Complainant and other Prosecution Witnesses [PWs] recorded on 08.06.2024, which is to be discarded, because there is no concept of further statement (under the above provision); read the Statement of the Complainant Lady [Mst. Pathani wife of Haji Bijar Khan

Gadani] and her Son [Muhammad Yaqoob] to support his arguments; contended that the statement under Section 161 of Cr.P.C and the further statement are not signed by the Complainant Applicant and the other Prosecution Witnesses and thus have no value in the eyes of law, because the statement recorded under Section 162 (of Cr.P.C) is not required to be signed, but not the one made under the former provision. Argued, that there is an unexplainable delay of seven days in lodgment of FIR, as the incident happened on 21-05-2024 and the FIR was lodged on 28-5-2024; the prosecution case is that of shifting stance and self-contradictory, which means that it is a case of further inquiry, entitling the Applicant for grant of bail. Cited the following Judgments in support of arguments;

- i. 2024 SCMR 205. (*Naveed Sattar v. The State and others*)
- ii. 2023 SCMR 364 (*Fahad Hussain and another v. State through Prosecutor General Sindh*)
- iii. 2026 SCMR 917 (*Muzammil Hussain v. The State and another*)
- iv. 2026 SCMR 1076 (*Fayaz Khan v. Mohsin Shah and another*)

5. The above line of Argument is controverted by Mr. Salahuddin Panwhar, the Counsel for the Complainant. He states that there is no contradiction in the version of prosecution, or the Complainant. About the delay in lodging the FIR, he states that first the above deceased was injured and hospitalized whereafter he expired and then the FIR was lodged. It is for the Applicant to show that there was any *mala fide* on the part of the Complainant to implicate the Applicant/accused in the FIR and there is no logic that why a Complainant would lodge a false FIR regarding her Son's murder. To augment his arguments, placed reliance on the following Case law;

- i. 2025 SCMR 1967. (*Ghazi Arab v. The State*)
- ii. 2025 YLR 857. (*Muhammad Usman v. The State*)
- iii. 2011 SCMR 872 (*Muhammad Nadeem alias Deemi v. The State*)
- iv. 2023 SCMR 1724. (*Allah Dewayo Shahani v. The State through Prosecutor General, Sindh*).
- v. 2006 SCMR 1292. *Raja Muhammad Irshad v. Muhammad Bashir Goraya and others*.
- vi. 2010 SCMR 1735. (*Asif Ayub v. The State*)
- vii. 2010 SCMR 1221. (*Shahzad Ahmed v. The State through F.I.A. Islamabad*)

viii. 2010 SCMR 855. (*Syed Lakhat-e-Hasnain v. The State*)

6. Syed Sardar Ali Shah, the learned Additional Prosecutor General also opposes the bail. Crux of his Arguments is that the Crime weapon along with empties were recovered; the Forensic Report about CCTV footage is available, as mentioned in the Challan submitted before the Trial Court; further statement under Section 161 Cr.P.C is neither barred nor required to be signed, as argued by the Applicant's Counsel. He has cited the following case law;

i. 2020 SCMR 1206. (*Muhammad Shabir and others v. The State*).

7. Arguments heard, record perused.

8. Gist of the case law cited by the learned Counsel for the Applicant is, that in Naveed Case [*supra*], the complainant in her three supplementary statements of different dates has not nominated the petitioner as accused, but after four months, in her another statement, she nominated the petitioner for the first time; in this backdrop, the Hon'ble Supreme Court is of the view that the complainant kept on changing her stance. The identification parade was conducted after nomination of petitioner, which too was open for determination; consequently, learned Supreme Court granted the bail. Further inquiry concept elaborated in the Judgment of Fahad Hussain (*ibid*), should have nexus with the result of the case, "*and it also pre-supposes the tentative assessment which may create doubt with respect to the involvement of the accused in the Crime*". The established rule, that prosecution should prove its case beyond reasonable doubt, applies at all stages, including pre-trial and even at the time of deciding whether accused is entitled for bail or not. Merely, because an alleged offence is within the prohibitory clause, that alone is not a valid ground to decline bail to the petitioner; "*gravity or horror of a heinous crime, by itself, cannot obstruct the grant of bail if the circumstances otherwise render the guilt of the accused, as calling for further inquiry*". In this Muzammil Hussain case (*supra*) there was unexplained delay of 14 days in lodgment of the

FIR; this factor together with the fact that the co-accused was already admitted to bail, the petitioner was granted post-arrest bail.

9. Summary of the case law cited by the Complainant's Advocate, is, when, delay in lodging the FIR is explained, in particular, in murder cases (Qatl-i-Amd) then such delay is considered by the Courts, in refusing to grant bail and established principle is reiterated, that deeper appreciation is not allowed at the bail stage, but only tentative assessment. At the bail stage, Court has to consider, allegations made in the FIR, statements recorded under Section 161 Cr.P.C. and other incriminating material against the accused.

10. As per the FIR, the incident took place on 21.05.2024 at 11:00 hours, when the Applicant and the other Co-accused fired straight fatal shots from Pistol at the Deceased which was witnessed by the Complainant [Deceased's Mother], her above named other Son Muhammad Yakoob (Prosecution Witness) and Salahuddin son of Dost Ali Gadani (Prosecution Witness), as a result of which Deceased was injured; the latter (Deceased) was first taken to Shaikh Zaid Hospital at Rahimyar Khan (Punjab) wherefrom he was brought in Air-Ambulance to Agha Khan Hospital, at Karachi on 22.05.2024 and on 24.05.2024 he succumbed to his injuries. After funeral the FIR was lodged on 28.05.2024, that is, four days after his death, and this delay, in view of the above facts and the case law is not fatal.

11. As per the Further Statement of the Complainant and other PWs, the Applicant and the other Accused were recognized while riding motorbike near Jarwar [area] at Chakar Wah, by the Complainant and other PWs. The Complainant has stated that Asghar Ali Lund (present Applicant/accused) and Barkat (Co-accused) are the actual murderers, as they made straight firearm shots at the Deceased, besides, nominated one Abdullah Son of Muhammad Ali Lund as facilitator. The Complainant's Son (PW-

Muhammad Yakoob) also recorded the same Statement, that when they saw the Applicant and the two other Co-accused riding a motorbike, they were recognized as the actual culprits. These Statements, *prima facie* do not support the contention of the Applicant's Counsel, that there is any contradiction, because it is the Complainant who recognized the present Applicant, which is supported by the other PWs, and not otherwise, as argued. As far as alleged contradiction in the Statement under Section 164 Cr.P.C, is concerned, at this stage it would not be proper to do the deeper appreciation because after recording the said Statements of PWs, it would be subject to cross-examination and that assertion is admissible in the evidence, and can prejudice the trial.

12. It was a day light incident, alleged assailants' faces were not covered, and the Complainant, her Son and one Salahuddin [PWs] saw the incident and narrated the same to the Police. After few days they again saw the Applicant and the other Co-accused riding on a motorbike when the Complainant herself recognized and nominated the accused in her Further Statement, which is not barred under the law. The case law cited by the Applicant Counsel is distinguishable from the facts of present case, in particular, on the validity of 'further Statement', *inter alia*, because in Naveed case (*supra*) bail was granted to the accused due to changing stance of the complainant in her supplementary and 'further Statements' on different dates, but recording of 'further Statement' *per se*, has not been held as illegal. Conversely, the case law cited by the Counsel for the Complainant, is applicable.

13. Conclusion is, that the Applicant/accused is not entitled for the concession of bail, which is dismissed, with a clarification that any observation in this Order is of tentative nature and shall not prejudice the trial.

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