

THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail App. No. S – 517 of 2026

[Bashir Shar v. The State]

Date of hearing : 14.09.2026

Date of decision : 14.09.2026

Mr. Ali Ahmed Khan, Advocate for applicant.
Mr. Shabbir Ali Bozdar and Ms. Aaraf Soomro, Advocates for complainant.
Mr. Zulfiqar Ali Jatoi, Additional Prosecutor General.

ORDER

ARBAB ALI HAKRO, J. – Through this application under Section 497, Cr.P.C., applicant Bashir son of Jamsheer Shar seeks post-arrest bail in Crime No.67 of 2018, registered at Police Station Wasti Jeewan Shah, for offences punishable under Sections 302, 201, 147, 148 and 149, PPC. The applicant was arrested on 06.04.2026 and his application for bail was dismissed by the learned Additional Sessions Judge/MCTC, Ubauro, vide order dated 22.04.2026.

2. Briefly stated, the prosecution case, as disclosed in the FIR, is that the deceased, Bakhsh Ali, had contracted a second marriage with the daughter of accused Mehrab Shar, and a dispute had arisen between them regarding Rs.13,00,000/-. On 29.08.2018, the deceased, accompanied by the complainant and other family members, went to the house of Mehrab Shar to settle the dispute. It is alleged that Mehrab Shar, along with the present applicant and other accused persons, was present there, armed with Kalashnikovs. Accused Mehrab allegedly fired at Bakhsh Ali, causing his death. It is further alleged that thereafter the accused persons threatened the complainant party and removed the dead body towards the lake with the intention of causing disappearance of evidence. The dead body was recovered on 30.08.2018.

3. Learned counsel for the applicant contended that no role in firing at the deceased has been attributed to the applicant and that the fatal shot has specifically been attributed to co-accused Mehrab. It was further contended that no specific overt act has been assigned to the applicant; that the FIR was lodged after an unexplained delay; that the medical evidence regarding the probable interval between death and post-mortem does not correspond with the time of occurrence mentioned in the FIR; and that Roznamcha Entry

No.7 dated 30.08.2018 does not contain the name of the applicant. It was also submitted that, when examined before the learned Trial Court, the complainant did not attribute to the applicant the act of catching the deceased. Learned counsel, therefore, argued that the case of the applicant falls within the ambit of further inquiry under Section 497(2), Cr.P.C. Reliance was placed upon the cases of *Nooruddin*, *Sooba Khan*, *Ghulam Mujtaba Qadri*, *Faqir Muhammad* and *Said Nabi*.¹

4. Learned counsel for the complainant opposed the application and submitted that the applicant is specifically nominated in the FIR and is alleged to have been present at the place of occurrence while armed with a K.K. He contended that the prosecution case is not confined to the individual act of firing but concerns an occurrence allegedly committed by an armed unlawful assembly, followed by the removal of the dead body. He further contended that the applicant remained an absconder for about eight years and is, therefore, not entitled to the concession of bail. Reliance was placed upon the cases of *Mst. Asia Qaseem*, *Sidra Abbas* and *Riaz*.²

5. Learned Additional P.G. also opposed the application and submitted that the applicant remained fugitive from law for approximately eight years and was arrested only on 06.04.2026. He contended that such conduct, coupled with the material connecting the applicant with the occurrence, weighs against the grant of post-arrest bail. Reliance was placed on a reported decision of this Court.³

6. I have heard the learned counsel for the parties, learned Additional P.G. and have examined the material available on record.

7. The offence under Section 302, PPC falls within the prohibitory clause of Section 497, Cr.P.C. At the stage of bail, the Court is required to undertake a tentative assessment of the material on record to determine whether there are reasonable grounds for believing that the accused is connected with the commission of the offence or whether the case falls within the ambit of further inquiry contemplated by Section 497(2), Cr.P.C. Such an assessment is neither a final determination of guilt nor a substitute for trial. While making it, the Court must refrain from recording any conclusive finding on the guilt or innocence of the accused. At the same time, not every

¹ *Nooruddin v. The State* 2005 MLD 1267; *Sooba Khan v. The State* 2012 MLD 625; *Ghulam Mujtaba Qadri v. The State* 2012 SCMR 662; *Faqir Muhammad alias Faqiro v. The State* 2026 YLR 532; *Said Nabi v. Ajmal Khan* 2024 SCMR 464.

² *Mst. Asia Qaseem v. Alamzeb* 2021 SCMR 302; *Sidra Abbas v. The State* 2020 SCMR 2089; *Riaz (deceased) through brother Abdur Rauf v. Gulzar* 2026 SCMR 980.

³ SBLR 2019 Sindh 1915.

hypothetical question that may ultimately be answered by the Trial Court after recording evidence makes out a case of further inquiry; the question must have a nexus with the result of the case and must tend to show that the accused may not be guilty of the offence with which he is charged.⁴

8. The principal argument advanced on behalf of the applicant is that the fatal firing has been specifically attributed to co-accused Mehrab and that no role in the firing has been assigned to the applicant. To the extent stated, the FIR supports this submission. It is also noted that in her examination-in-chief dated 25.03.2021, the complainant did not attribute to the applicant the act of catching the deceased; rather, she attributed that act to Mehrab, Jabbar, Nawab and Ghulam Rasool. This circumstance is, therefore, taken into consideration in favour of the applicant. At the same time, that statement was recorded while the applicant was a fugitive and not before the Court, and its evidentiary worth, for or against him, is a matter for the Trial Court. The question, however, is whether the absence of a role in the fatal firing, by itself, brings the applicant within the ambit of further inquiry. In my view, in the peculiar facts of the present case, it does not.

9. The applicant is not an accused merely introduced through a supplementary statement, nor is his presence at the place of occurrence doubtful. He is specifically named in the FIR. His presence at the place of occurrence is expressly alleged, and he is stated to have been armed with a K.K. The prosecution has further invoked Sections 147, 148 and 149, PPC, thereby setting up a case that the occurrence was committed by an armed unlawful assembly in prosecution of its common object.

10. Section 149, PPC embodies a rule of vicarious liability. Where an offence is committed by a member of an unlawful assembly in prosecution of the common object of that assembly, or is such as the members knew to be likely to be committed in prosecution of that object, every person who, at the time of the commission of the offence, is a member of such assembly may be held liable for the offence. The application of Section 149 ultimately depends upon proof of the unlawful assembly, its common object, the membership of the accused and the requisite nexus between the offence and the common object. Those questions are matters for trial. At the bail stage, however, the Court need only see whether the prosecution has placed material that *prima facie* connects the accused with such assembly and occurrence. It is correct that the question of vicarious liability is ordinarily left to be determined at trial.

⁴ *Shoaib Mehmood Butt v. Iftikhar-ul-Haq* 1996 SCMR 1845.

The Supreme Court has, however, clarified that this is not an absolute rule and that the question may also be looked into at the bail stage. In that case, an accused charged as a member of an unlawful assembly was refused bail even though the question of his vicarious liability for murder was left to be decided at trial, because sufficient incriminating material otherwise connected him with the alleged offences.⁵

11. In *Allah Dewayo Shahani*,⁶ a case under Sections 302, 324, 114, 147, 148 and 149, PPC, the Supreme Court observed that the common object of an unlawful assembly may be gathered from its milieu, including the arms carried by its members and their behaviour at the scene of crime; that the demeanour of each member of the assembly is relevant to determining the common object; and that Section 149, PPC makes every person who is a member of the assembly at the time of the commission of the offence guilty of that offence. It is true that in that case the petitioner had also been ascribed a firearm injury to the deceased, and to that extent the facts are not identical. The principle that flows from the language of Section 149 is that the conduct and armed presence of the members of an unlawful assembly are relevant, and that liability under that provision is not to be judged merely by the individual act attributed to each accused in isolation.

12. The same principle is attracted, tentatively, to the present case. The prosecution alleges that the applicant was present with the principal accused and other accused persons, armed with a K.K., at the very place where the deceased was allegedly shot. The allegation does not stop with the firing; it further encompasses the subsequent conduct of the accused persons in threatening the complainant party and removing the dead body with a view to causing disappearance of evidence. Thus, the prosecution case rests on a concerted occurrence rather than an isolated allegation of firearm injury attributable to the applicant individually.

13. It is, therefore, not a case where the applicant's mere name appears in the FIR without any connecting circumstance. His specific nomination, alleged armed presence at the scene, the prosecution allegation of an armed unlawful assembly, and the allegation concerning the subsequent removal of the dead body constitute material which, at least tentatively, connects him with the occurrence. Whether this material ultimately proves membership of the unlawful assembly and the requisite common object is a matter to be determined by the Trial Court after recording evidence.

⁵ *Hilal Khattak v. The State* 2023 SCMR 1182.

⁶ *Allah Dewayo Shahani v. The State* 2023 SCMR 1724.

14. The authorities relied on by learned counsel for the applicant do not persuade me otherwise. In *Ghulam Mujtaba Qadri*,⁷ the accused was not named in the FIR but was introduced through a supplementary statement. No role was attributed to him; he was not connected with the motive, and the Additional Prosecutor-General conceded that, during investigation, he had merely been present at the spot; he was also under eighteen years of age; the Supreme Court consequently treated the case as one requiring further inquiry. The factual foundation of that case is materially different from the present one, where the applicant is specifically nominated in the FIR and is alleged to have been an armed member of the unlawful assembly.

15. Likewise, *Nooruddin*⁸ turned upon circumstances materially affecting the prosecution case, including the station-diary entry made by the complainant himself soon after the occurrence, absence of the accused's names therein, unexplained delay in lodging the formal report and in recording statements, and a plea of alibi supported by hospital record. Those circumstances cannot be mechanically transplanted to the present case because the evidentiary effect of Roznamcha Entry No.7, as well as the ultimate effect of the delay, requires appreciation in the context of the entire prosecution evidence.

16. The case of *Sooba Khan*⁹ is also of no help to the applicant. There, the accused was not named in the FIR and was introduced by the complainant through a supplementary statement about a month after the incident; none of the eye-witnesses implicated him; the co-accused to whom the fatal injury was attributed had been released under Section 169, Cr.P.C.; and the Court found that he had in fact never absconded and was arrested from his own house. None of these features is present here.

17. As regards *Said Nabi*,¹⁰ the Supreme Court held that abscondence, by itself, cannot constitute an absolute ground for keeping an accused behind bars indefinitely. However, the accused in that case was found to have a generalized allegation; no incriminating recovery was made, and two co-accused who had been ascribed a similar role had already been acquitted after trial, while three others had been acquitted on the basis of compromise, so that the bulk of the prosecution case stood decided and abscondence was the only circumstance left against him. The said authority, therefore, does not lay down a proposition that an accused who is specifically nominated and

⁷ *Ghulam Mujtaba Qadri* (n.1 above).

⁸ *Nooruddin* (n.1 above).

⁹ *Sooba Khan* (n.1 above).

¹⁰ *Said Nabi* (n.1 above).

prima facie connected with an armed unlawful assembly must be admitted to bail merely because the fatal injury is attributed to another accused.

18. The reliance upon *Faqir Muhammad*¹¹ is also distinguishable on facts. The reported case concerned accused persons against whom no overt act or injury to the deceased was attributed, whose role was ineffective firing, and whose cases were considered in the context of co-accused with similar roles who had already been granted bail; the State did not oppose bail there, and a subsequent investigation had recommended that the case against them be disposed of. In the present matter, the applicant is specifically nominated, allegedly armed, and is sought to be connected with an occurrence prosecuted as one committed by an unlawful assembly. There is, therefore, no question of extending bail merely on the basis of the absence of a fatal firing role.

19. The contention regarding the delay in registration of the FIR has also been considered. The occurrence is alleged to have taken place on 29.08.2018 at about 08:00 a.m., whereas the FIR was registered on 31.08.2018 at about 04:00 p.m. The delay is undoubtedly a circumstance that the Trial Court shall be required to examine when appreciating the evidence. Nevertheless, at this stage, such delay does not erase the specific nomination of the applicant or render his alleged presence as an armed participant wholly inconsequential. Whether the delay affected the credibility of the prosecution witnesses is a matter for appreciation of evidence at trial.

20. The medical evidence has likewise been considered. The post-mortem was conducted on 30.08.2018, and the medical officer opined that the probable interval between death and the post-mortem was approximately 30 to 40 hours. The opinion is expressed in probable terms. Its precise evidentiary effect, particularly when considered alongside the ocular account and other circumstances, cannot be finally determined at the bail stage. In the circumstances, the medical opinion does not, by itself, sever the tentative connection of the applicant with the occurrence.

21. Learned counsel has further relied on Roznamcha Entry No. 7 dated 30.08.2018, contending that the name of the applicant does not appear therein. The material before the Court shows that the entry was recorded on information or disclosure attributed to Ghous Bux, son of Bagan Faqeer, stated to be the brother of the deceased. He is neither the complainant nor, according to the FIR placed before the Court, an eye-witness to the

¹¹ *Faqir Muhammad* (n.1 above).

occurrence. The absence of the applicant's name in that entry may be a circumstance to be considered at trial, but at this stage it cannot be treated as sufficient to nullify his specific nomination in the FIR, particularly when the evidentiary worth and context of the Roznamcha entry remain matters for determination after evidence is recorded.

22. The authorities relied upon by the complainant support the approach that bail is to be determined upon the material connecting the accused with the alleged offence and that the Court must not disregard material circumstances merely because the individual accused has not been assigned the fatal injury. In *Mst. Asia Qaseem*,¹² a petition for cancellation of bail, the Supreme Court cancelled bail where the High Court had proceeded on factual assumptions contrary to the record and had failed to give due effect to material showing the accused persons' connection with an armed occurrence; there, the accused had been apprehended at the spot while armed, and empties recovered from the scene were found to have been fired from the weapons recovered from them.

23. Similarly, in *Sidra Abbas*,¹³ the Supreme Court, again while cancelling bail, emphasized that material indicating active involvement of an accused cannot be ignored while considering bail and that an order granting bail contrary to the material on record is liable to be interfered with. There, the presence of the accused with the principal accused at two successive crime scenes, the use of his own licensed pistol in the crime and the role of facilitation ascribed to him by an eye-witness were held to be circumstances that could not be brushed aside as mere presence. The said principle is relevant here to the extent that the Court must assess the entire prosecution case rather than isolate one circumstance, i.e., the attribution of the fatal shot to co-accused Mehrab, and ignore the remaining material concerning the applicant's alleged participation.

24. The conduct of the applicant in remaining fugitive from law for more than seven years and seven months, that is, from the date of occurrence on 29.08.2018 until his arrest on 06.04.2026, has also been taken into consideration. Nothing was placed before the Court to explain such a long absence. Abscondence by itself is not conclusive against an accused and cannot substitute for material connecting him with the offence. The Supreme Court in *Said Nabi*¹⁴ has itself held that, though abscondence is a relevant

¹² *Mst. Asia Qaseem* (n.2 above).

¹³ *Sidra Abbas* (n.2 above).

¹⁴ *Said Nabi* (n.1 above).

factor, it is not to be considered in isolation to keep a person behind bars for an indefinite period. Nevertheless, where substantive prosecution material independently connects an accused with a serious offence, prolonged evasion of arrest is a relevant circumstance in assessing the overall conduct of the accused. In *Riaz*,¹⁵ the Supreme Court treated the unexplained disappearance of an accused soon after the occurrence, and his remaining a fugitive for about eight years, as a circumstance pointing towards his guilt. The Court made that observation after a full trial and cannot apply it with the same force at the bail stage; it nonetheless shows that long and unexplained abscondence is not a neutral circumstance. In the present case, therefore, abscondence is not being treated as the sole ground for refusal of bail but is considered cumulatively with the other material discussed above.

25. The fact that co-accused Mehrab, to whom the fatal firing is specifically attributed, is stated to be absconding has also been considered. That circumstance, however, does not automatically create parity in favour of the present applicant. Bail is to be determined on the basis of the material available against each accused. The applicant's alleged presence, armed status and membership of the alleged unlawful assembly have to be examined independently.

26. It is also significant that the prosecution has invoked Section 201, PPC, in respect of the alleged subsequent removal of the dead body. If ultimately proved, the allegation constitutes a separate circumstance relevant to the prosecution case concerning the conduct of the accused persons after the murder. At this stage, the Court is not required to determine whether the ingredients of Section 201, PPC will ultimately be established against the applicant; nevertheless, the allegation forms part of the material that cannot simply be ignored when undertaking the tentative assessment required by Section 497, Cr.P.C.

27. It is true that the applicant has not been attributed with the fatal firing, and that the act of catching the deceased has also not been attributed to him in the complainant's examination-in-chief. However, bail is not to be determined by considering such circumstances in isolation. The Court is required to examine whether, notwithstanding those circumstances, the remaining material provides reasonable grounds for connecting the accused with the offence, or whether his case genuinely falls within further inquiry.

¹⁵ *Riaz* (n.2 above).

28. In the present case, the applicant is specifically nominated in the FIR; his presence at the place of occurrence while allegedly armed with a K.K. is specifically asserted; the prosecution case is that the occurrence was committed by an armed unlawful assembly; the subsequent removal of the dead body is also attributed to the accused persons collectively; and the applicant remained fugitive from law for more than seven years. These circumstances, taken cumulatively, provide sufficient tentative material connecting the applicant with the occurrence and do not bring his case within the ambit of Section 497(2), Cr.P.C.

29. Consequently, the applicant has failed to make out a case for the grant of post-arrest bail. The material circumstances relied upon by the defence may be pressed before the learned Trial Court at the appropriate stage, but they do not, at present, create such doubt regarding the applicant's connection with the occurrence as would bring the case within Section 497(2), Cr.P.C., nor do they have the nexus with the result of the case which the law requires for a plea of further inquiry to succeed.¹⁶

30. For what has been discussed above, the instant bail application is **dismissed**. Since the case pertains to the year 2018, the learned Trial Court shall proceed with the trial against the applicant expeditiously and make every endeavour to conclude it within four (04) months from the date of receipt of this order. Before parting with this order, it is clarified that the observations made herein are tentative in nature and shall not prejudice the learned Trial Court in any manner. The learned Trial Court shall decide the case strictly in accordance with law, on the basis of the evidence brought before it, uninfluenced by any observation made in this order. Let a copy of this order be sent to the learned Trial Court for information and compliance.

J U D G E

Abdul Basit

¹⁶ *Shoaib Mehmood Butt* (n.4 above).