

HIGH COURT OF SINDH CIRCUIT COURT, MIRPURKHAS
Crl. Bail Application No.S-95 of 2025

Applicants/ accused: 1. Shanker s/o Ravo.
 2. Mehro s/o Premoon.
 3. Walamchand s/o Shanker.
 4. Moolchand s/o Shanker.
 Through Mr. Shah Nawaz Jinjhi advocate.

The State: Through, Mr. Ghulam Abbas Dalwani, D.P.G.

Complainant: Chander s/o Misri
 In person.

Crl. Bail Application No.S-128 of 2025

Applicant/ accused: Prem alias Premchand s/o Khano alias Kanhoon Kolhi
 Through Mr. Dilip Kumar Kolhi advocate.

The State: Through, Mr. Ghulam Abbas Dalwani, D.P.G.

Complainant: Chander s/o Misri
 In person.

Date of hearing: 12.06.2025

Date of Order: 12.06.2025

ORDER.

Jan Ali Junejo, J. – Through these common applications under Section 498, Cr.P.C., the applicants seek pre-arrest bail in case FIR No.09 of 2025 registered at Police Station Dano Dhandhal, District Tharparkar @ Mithi, for offences under Sections 147, 148, 149, 114, 506(ii), 435, 342 and 504, P.P.C. The applicants had earlier approached the learned Sessions Judge, Tharparkar @ Mithi, where their bail pleas were declined vide orders dated 12.04.2025 and 10.05.2025. Ad-interim protection was thereafter extended by this Court on 18.04.2025 and 19.05.2025 respectively.

2. As per the FIR lodged on 02.04.2025 at 1500 hours, the complainant alleges that on 01.04.2025 at about 1:00 p.m., while constructing a house on Survey No.40, the applicants, armed with lathis and a hatchet, arrived, abused him, and, upon instigation attributed to applicant Mehro, allegedly gave him fist and kick blows. It is further alleged that applicant Shanker set a hut on fire. On his cries, his brothers Neelchand and Bhagchand reached the spot, rescued him, and the accused allegedly issued threats of dire consequences before departing.

3. The learned counsel for the Applicants has argued that the FIR suffers from an unexplained delay of one day despite proximity to the police station, eroding the presumption of spontaneity. It is further argued that the parties are admittedly on inimical terms over survey land, making false implication a distinct possibility. He further emphasized that except for an omnibus allegation against the crowd, no specific overt act is assigned to most applicants; even the allegation of arson lacks particulars as to the means employed. It is further argued that the complainant has sworn an affidavit of “no objection”, acknowledging an amicable settlement through intervention of respectables. He further contended that the offences, by and large, do not fall within the prohibitory clause of Section 497(1), Cr.P.C., and the case, in any event, attracts “further inquiry” under Section 497(2), Cr.P.C. Lastly, the learned counsel prayed for grant of pre-arrest bail and its confirmation.

4. Learned Deputy Prosecutor General recorded no objection to confirmation of bail in view of the compromise. The complainant also appeared in person and reiterated his lack of objection to the concession of bail.

5. I have carefully considered the submissions advanced by learned counsel for the Applicants as well as the learned Deputy Prosecutor General for the State. I have also undertaken a tentative appraisal of the material available on record, as is permissible at the bail stage. A perusal of the record reveals that the FIR was lodged with a delay of approximately one day, for which no cogent explanation has been offered. Unexplained delay at the inception of the case is a material circumstance that dents the presumption of truth and spontaneity and often indicates deliberation or embroidery. Save for a bald allegation that applicant Shanker set a hut ablaze, the accusations are omnibus. Crucially, the FIR is silent about the instrumentalities of arson, such as the use of petrol, kerosene, a matchstick or any other accelerant, needed to establish how the alleged fire was caused. This omission is not merely a peripheral lapse; it goes to the core of the prosecution's case, as the *actus reus* (physical act) and *mens rea* (criminal intent) for an offence under Section 435, P.P.C. must be pleaded and later proved with specificity. In the absence of such foundational details at this preliminary stage, the possibility of embellishment, exaggeration or false implication cannot be excluded. Consequently, the matter warrants the statutory benefit of "further inquiry" within the contemplation of Section 497(2), Cr.P.C., as consistently recognized by superior courts where key ingredients of the alleged offence remain doubtful or inadequately alleged. The Honourable Supreme Court of Pakistan, in the case of *Abdul Rehman v. The State and others (2023 SCMR 2081)*, was pleased to confirm the concession of pre-arrest bail to the accused persons, observing that: *"It seems that the primary dispute between the parties is with regard to the ownership/ possession of the land in question. In this view of the matter, the possibility of false implication just to pressurize the petitioner's side to gain ulterior motives cannot be ruled out. However, at this stage, we do not want to comment on this aspect of the matter, lest it may*

prejudice the case of either of the party. The crime report was lodged after a delay of 62 days for which the complainant did not utter a single word. In the crime report, only a general role has been ascribed to the petitioner and his six co-accused. We have been informed that two co-accused of the petitioner, who were specifically nominated in the crime report, have been declared innocent during investigation. Even otherwise, we have been informed by the learned Law Officer that all the seven accused have been ascribed the role of jointly causing a loss of about Rs.100,000/- to the complainant. It is settled law that liberty of a person is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973, and the same cannot be taken away merely on bald and vague allegations”.

6. Although Section 435, P.P.C. is non-compoundable, settled jurisprudence recognizes that an out-of-court settlement may be given due weight at the bail stage as a redeeming factor fostering social harmony and lowering the incentive for vengeful prosecution. Here, the complainant's sworn no-objection tilts the balance in favour of liberty. The bulk of the charged offences do not attract the prohibitory clause of Section 497(1), Cr.P.C. It is a consistent rule that in non-prohibitory offences, grant of bail is a rule and refusal the exception, absent extraordinary circumstances. The admitted land dispute furnishes a plausible backdrop for false implication. Where mala fides cannot be ruled out from the attending circumstances, pre-arrest bail, being an extraordinary protection against motivated arrest and humiliation, may justifiably be confirmed. No recovery is shown to be outstanding; the applicants are local residents with no material indicating that they are hardened or habitual offenders. There is no concrete apprehension of absconding or meddling with evidence that cannot be addressed through tailored conditions. In cases not attracting the prohibitory

clause of Section 497(1), Cr.P.C., the grant of bail is to be regarded as a rule, while its denial constitutes an exception warranted only by extraordinary circumstances. The right to liberty is a fundamental and jealously guarded entitlement, and any curtailment thereof must meet a correspondingly elevated threshold of justification. Where allegations are general or suffer from material omissions bearing on the core ingredients of an offence, the case falls within “further inquiry” under Section 497(2), Cr.P.C. A credible nexus to mala fides, such as a pre-existing land dispute, supports the grant/confirmation of pre-arrest bail to forestall humiliation and unjustified detention. A voluntary compromise, even in a non-compoundable offence, may be factored as a mitigating consideration at the bail stage as it reduces the likelihood of misuse of liberty.

7. For the reasons discussed hereinabove, the present applications fall within the ambit of “further inquiry” as envisaged under Section 497(2), Cr.P.C. Consequently, the ad-interim pre-arrest bail earlier granted to the Applicants is hereby CONFIRMED on the same terms and conditions. The Applicants shall attend the trial Court on each and every date of hearing unless specifically exempted. Nothing contained in this order shall prejudice the merits of the case at trial, as the observations recorded herein are tentative and confined solely to the adjudication of bail.

JUDGE

