

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr Bail Application No. S-531 of 2024
Cr Bail Application No. S-551 of 2024

Applicant(s): **Parvez and Abdul Qadeer alias Nadeem** are present, and **Karam Ali Bhatti**, in Judicial Custody, all represented by Mr. Miran Bux Shar, Advocate.

Respondent: The State, through Mr. Khalil Ahmed Maitlo, Deputy Prosecutor General, and Complainant through Mr. Abdul Hussain Shambani, Advocate.

Date of hearing: **17-02-2025**
Date of decision: **21-02-2025**

O R D E R

RIAZAT ALI SAHAR, J- Through this single order, I dispose of Criminal Bail Application No. S-531 of 2024, which pertains to a plea for pre-arrest bail, and Criminal Bail Application No. S-551 of 2024, which seeks post-arrest bail, both arising out of the same FIR bearing Crime No. 101/2024, registered at Police Station Kumb, in respect of offences punishable under Sections 302, 148, and 149 PPC. The applicants in the earlier Criminal Bail Application had previously been denied the relief of pre-arrest bail by the learned Additional Sessions Judge-I, Khairpur. They now invoke the jurisdiction of this Court by way of the present application filed under Section 498-A Cr.P.C., seeking the same relief. Similarly, the applicant in the later Criminal Bail Application, having been denied the relief of pre-arrest bail, and subsequently post-arrest bail, by the learned Additional Sessions Judge-I, Khairpur, now approaches this Court by way of the present application under Section 497 Cr.P.C., once again seeking the same relief.

2. It has been alleged in the FIR lodged by the complainant, Kashif Ali, that the applicants are implicated in the following incident: On 13-04-2024, at approximately 13:30 hours, the accused individuals, namely

Parvez Ahmed, Abdul Qadeer alias Nadeem, and Karam Ali, all sons of Lal Bux Bhatti, along with two unidentified persons, arrived near the store of Raja Meerani, which is situated on the link road connecting Kumb to Chodaho, within the territorial jurisdiction of Deh Arbani. It is further asserted that all the accused individuals, acting in concert, subjected the deceased, Muhammad Bachal, to multiple blows using lathis (wooden sticks). Additionally, the accused Abdul Qadeer alias Nadeem is specifically alleged to have struck Muhammad Bachal Bhatti, the father of the complainant, with a brick. The purported motive behind the attack, as stated in the FIR, is that the deceased, Muhammad Bachal, in his capacity as the Incharge of the Drainage Department of the Town Committee Fakirabad, would frequently instruct the applicant/accused, Parvez Bhatti, to perform his official duties, which seemingly caused annoyance and resentment among the accused persons. Upon hearing the cries for help raised by the complainant and other members of his party, the accused individuals reportedly fled from the scene and successfully evaded immediate apprehension. Subsequently, the complainant and his associates arranged for the transportation of the injured Muhammad Bachal to a medical facility for urgent treatment. However, on the way to the hospital, he tragically succumbed to his injuries and was pronounced dead. Following the completion of the post-mortem examination and upon obtaining the necessary legal orders from the learned Additional Sessions Judge-IV/Justice of Peace, Khairpur, the complainant presented himself before Police Station Kumb and formally lodged the instant FIR.

3. It is, inter alia, contended by the learned counsel for the applicant that, in relation to the alleged dispute and altercation between the parties, which purportedly occurred two to three months prior to the lodging of the FIR, no departmental complaint was ever made by the deceased against the applicants/accused. Furthermore, the medical certificate does not specify the precise cause of death; on the contrary, the Medico-Legal Officer has explicitly stated that the alleged injuries sustained by the deceased were not sufficient to cause death, as recorded in the Note Paragraph of the post-mortem report dated 14-10-2024. Moreover, the final post-mortem report was received after an inordinate

and unexplained delay of six months. Additionally, the Mashirnama of Sarzameen (site inspection memorandum) was prepared after an unjustified delay of approximately 43 days from the date of the alleged incident. Notably, the said memorandum does not indicate the presence of any piece of brick allegedly used in the commission of the offence, nor was any such object ever recovered by the Investigating Officer during the course of the investigation. In view of these material discrepancies, the counsel submitted that the applicant is entirely innocent and has been falsely and maliciously implicated by the complainant party with the ulterior motive of exerting undue pressure upon them for their own wrongful and extraneous purposes.

4. Conversely, the learned counsel for the complainant submits that the quarrel did, in fact, take place, and as a direct consequence of the lathi and brick blows inflicted by the applicants during the said altercation, the deceased, Muhammad Bachal, sustained fatal injuries, ultimately resulting in his death. It is further contended that there exists no element of mala fide on the part of the complainant, and they are not satisfied with investigation of I.O. Furthermore, the complainant party does not accept or concur with the opinion rendered by the Medico-Legal Officer regarding the cause of death. In view of the foregoing, the counsel argued that the applicants/accused are not entitled to the concession of pre-arrest bail, as the circumstances of the case do not warrant the grant of such relief. He placed reliance on **2004 PCr.L.J 1760**.

5. The learned Deputy Prosecutor General has adopted and endorsed the arguments advanced by the learned counsel for **the** complainant in their entirety.

6. Having heard the learned counsel for the respective parties and perused the record, it is evident that there exists no complaint on record indicating any dispute between Muhammad Bachal and the applicants, who are employees of the Drainage Department. The Honourable Supreme Court in **Muhammad Sadiq v. The State (2015 SCMR 1394)** has held that "pre-arrest bail is an extraordinary relief, whereas

post-arrest bail is an ordinary relief. While seeking pre-arrest bail, it is the duty of the accused to establish mala fide on part of the investigating agency or complainant." Since the applicants have contended that mala fide exists in their case, the same is to be assessed in light of the record. In *Zaigham Ashraf v. The State (2016 SCMR 18)*, the Supreme Court held that "for getting the relief of bail, the accused only had to show that the evidence/material collected by the prosecution and/or the defence plea created reasonable doubt/suspicion in the prosecution case and he was entitled to avail the benefit of it." Furthermore, the deceased held a supervisory role over the applicants. Notably, no material evidence, such as a piece of brick or any other object, has been recovered from the place of the alleged incident. As per the post-mortem report, the Medico-Legal Officer (MLO) has opined that the injuries sustained by the deceased were in the nature of bruises and abrasions. The MLO has further observed that **"they are not sufficient to cause death in the ordinary course of nature."** The complainant party, however, expressed dissatisfaction with the said opinion. Nonetheless, they failed to avail themselves of the appropriate legal recourse for the constitution of a medical board for exhumation and re-autopsy. Instead, they merely submitted unauthenticated and simple photocopies of an application dated 24-01-2025, without any proof of acknowledgment or receipt.

7. Moreover, this application was filed after a delay of approximately three months following the issuance of the post-mortem report and nearly ten months after the alleged incident. In the present case, there exist two divergent opinions, leading to two potential legal conclusions. It is a well-settled principle of law that **"in dubio pro reo"**—where there is doubt, it must operate in favour of the accused. Furthermore, the law consistently leans in favour of the accused, as it is a cardinal principle of criminal jurisprudence that **"the accused is the favourite child of the law."** In light of this, the benefit of doubt must necessarily be extended to the applicants.

8. Additionally, the MLO was summoned in person to clarify his observations as recorded in the post-mortem report. However, his demeanour appeared to be unprofessional, as he failed to properly

articulate the cause of death in a legally sound and conclusive manner in the said report. Such an omission on the part of the MLO further weakens the prosecution's case and reinforces the principle that the benefit of ambiguity must be extended to the accused. The Supreme Court in *Malik Javaid Iqbal v. The State (PLD 2015 SC 250)* reaffirmed the principle that in bail matters, if two interpretations of the evidence are possible, the one favoring the accused must be preferred, as enshrined in the maxim "in dubio pro reo." In this case, the absence of a conclusive medical opinion further entitles the accused to the benefit of doubt. In the present case, the discrepancy in the medical reports raises reasonable doubt, bringing the case within the ambit of further inquiry.

9. In view of the foregoing discussion, and upon a tentative assessment of the material available on record, it is evident that the matter falls within the ambit of further inquiry, and there exists an element of mala fide on the part of the prosecution. Accordingly, the instant pre-arrest bail of Parvez and Abdul Qadeer alias Nadeem is hereby confirmed on the same terms and conditions as mentioned in the ad-interim pre-arrest bail order dated 07-08-2024. Moreover, the post-arrest bail of applicant Karam Ali Bhatti is hereby granted, subject to the furnishing of surety in the sum of Rs. 100,000/- in an acceptable form to the satisfaction of the Trial court.

10. The observations made herein are tentative and shall not prejudice the case of either party at trial.

J U D G E

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