

**IN THE HIGH COURT OF SINDH, BENCH AT
SUKKUR**

Cr. Bail Application No. S-444 of 2024
Cr. Bail Application No. S-449 of 2024
Cr Misc. Application No. S-393 of 2024

Applicant(s): **Khair Muhammad & Muhammad Ramzan**, both by caste Abro are present along with their counsel M/s Syed Zaffar Ali Shah, Athar Hussain Abro & Ameer Hussain Solangi, Advocates.

Complainant: **Muhammad Abro** is present along with applicant in Crl.M.A.No. S-393/2024: his counsel M/s Jahangir Kalhor and Riaz Ali Shaikh, Advocates.

Respondents: Nemo for respondents in Crl. Misc. Application No.S-393/2024.

The State: Through Mr. Shafi Muhammad Mahar, Deputy Prosecutor General.

Date of hearing: **03-02-2025**
Date of decision: **21-02-2025**

ORDER

RIAZAT ALI SAHAR, J- Through this single order, I dispose of two Crl. Bail Applications and one Crl. Miscellaneous Application for cancellation of bail, all arising from the same FIR No. 15/2024, registered at P.S Kamaldero, concerning offences punishable under Sections 337-A(i), 337-A(iii), 337-A(v), 337-A(vi), 337-F(i), 337-F(vi), 147, 148, 149, 504 & 34 of the Pakistan Penal Code (PPC). There are two applicants seeking pre-arrest bail, both of whom were denied bail through the impugned order dated 29.06.2024, passed by the Additional Sessions Judge, Kandiaro. Meanwhile, complainant has approached this Court through a Crl. Miscellaneous Application under Section 497(5) Cr.P.C, seeking the cancellation of bail granted to three accused

persons namely Abdul Rehman, Asghar and Sajjad in the same crime, whose bail was confirmed through the very same impugned order dated 29.06.2024.

2. The case of prosecution, in brief, is that the complainant states that he owns and cultivates agricultural land in Deh Mahesar, which led to hostility from the accused, Muhammad Ramzan. A *Faisla* (customary settlement) was conducted before the *Nekmards* (village elders), but the accused remained dissatisfied and openly declared their intent to harm the complainant and his family. On 07-05-2024, at approximately 1:30 PM, the complainant, along with his nephew Muhammad Ameen and Asif Ali (both sons of Hakim Ali), his brother Hakim Ali (son of Muhammad Morial), and his son Ali Khan, all by caste Abra and residents of Village Muhammad Safar, Taluka Kandiaro, proceeded to their land for threshing wheat crops, where they encountered the accused: Muhammad Ramzan, armed with a rifle; Altaf, carrying an iron rod; Sajjad and Imtiaz, each armed with a lathi (both sons of Muhammad Ramzan, residents of Village Muhammad Safar Abro); Khair Muhammad, wielding an iron rod; Abdul Rehman, carrying a lathi (both sons of Dawood); Asghar Ali, son of Khan Muhammad, armed with a lathi (resident of Village Fazul Abro); and an unknown individual who could be identified upon sight. The accused verbally abused the complainant and his family, threatening that they would be dragged before the *Nekmards* and “taught a lesson.” Without provocation, Khair Muhammad struck the complainant on the head with an iron rod, while Abdul Rehman inflicted a danda (wooden staff) blow on his left wrist, causing him to fall. Ramzan then struck Asif Ali on the head with the butt of his rifle, causing him to collapse, while Sajjad hit Hakim Ali on the head and above his left eye with a danda. Altaf struck Ali Khan on the head and left elbow with an iron rod, Imtiaz delivered a lathi blow to Muhammad Ameen’s face, and Asghar Ali hit Muhammad Ameen on the right elbow with a lathi. Thereafter, all the accused collectively assaulted the complainant

and his family, using the butts of rifles and repeaters, iron rods, *dandas*, kicks, and fists, inflicting grievous injuries. The victims' cries for help attracted nearby villagers, who intervened and called out (*hakal*) to the accused. Upon seeing them, the accused hurled further abuses before fleeing the scene. The complainant and his injured family members were left severely wounded due to the premeditated and brutal assault inflicted upon them.

3. The learned counsels for the applicants, Khair Muhammad and Muhammad Ramzan, have, *inter alia*, contended that the applicants are innocent and have been falsely and maliciously implicated in the present case by the complainant, Muhammad Abro. It is argued that the complainant has deliberately included their names in the FIR due to an ongoing land ownership dispute between the complainant and his brother, Hakim. The applicants' names were allegedly added as an act of reprisal, as one of the applicants had previously lodged an FIR bearing Crime No. 13/2024 at Police Station Kamaldero against the complainant side. Furthermore, it is submitted that all the prosecution witnesses (PWs) are close relatives of the complainant, which clearly indicates malafide intent on the part of the prosecution. The FIR was lodged after an unexplained delay of 25 days from the date of the alleged incident, further casting doubt on the veracity of the allegations. The learned counsels further contended that the offence falls within the ambit of the prohibitory clause of Section 497 Cr.P.C, making the case fit for bail and the Investigating officer has found applicants innocent and put their names in Colum No. 2o of the final report (challan) under Section 173 Cr.P.C, which is yet to be furnished before the trial court. Additionally, a material contradiction exists between the ocular account and the medical evidence, which further weakens the prosecution's case, requiring further investigation.

4. Contrarily, the prosecution, along with the counsel for the complainant, has vehemently opposed the grant of bail to accused Khair Muhammad and Muhammad Ramzan while also seeking

the cancellation of bail granted to Abdul Rehman, Asghar Ali, and Sajjad. They contend that all the accused persons mentioned in the FIR have been assigned specific roles in the commission of the offence, and their actions were instrumental in initiating and aggravating the altercation, leading to the instant crime. It is further submitted that the accused who were granted bail have misused the concession by issuing lethal threats to the complainant party, thereby obstructing the course of justice. The prosecution also asserts that the offence does not fall within the ambit of the prohibitory clause of Section 497 Cr.P.C, arguing that the applicants do not deserve the extraordinary relief of bail, whilst producing copy of Judgment dated 19.12.2024 passed by 1st Civil Judge/ Judicial Magistrate in case pertaining to Crime No. 13/2024 P.S Kamaldero, whereby the instant complainant along with other accused were acquitted.

5. Having heard the learned counsel for the respective parties and perusing the record available before me, I proceed to determine the matter accordingly.

6. In recent times, there has been a discernible rise in the registration of First Information Reports (FIRs) pertaining to land disputes and familial disagreements, particularly in the rural and interior regions of Sindh. This emerging pattern appears to be a misuse of the criminal justice system, wherein individuals, in a bid to exert undue pressure and harassment upon their adversaries, institute criminal proceedings by implicating multiple persons from the opposing party in an FIR. Such actions are often undertaken with the intent to subject the accused individuals to protracted litigation, causing them undue hardship and compelling them to endure the rigours of judicial proceedings until a final adjudication is rendered by the courts.

7. It is acknowledged that our Courts possess the highest degree of legal acumen and is endowed with the ability to dispense justice in its fullest measure. However, it is equally imperative to ensure

that innocent individuals are not embroiled in criminal litigation on account of trivial civil disputes, particularly those arising from mere disagreements over land ownership. Each case ought to be assessed on its own merits, devoid of any extraneous considerations, so as to uphold the principles of justice and fair play.

8. In the present matter, the applicant, Khair Muhammad, has been ascribed a specific role in the FIR, wherein it has been alleged that he inflicted injuries upon the injured Muhammad/complainant using an iron rod. The medico-legal examination conducted by the medical officer establish four injuries which are categorised as follows:

- A. **Shajjah-i-Munaqqilah:** As per the legal-medico definition, this injury refers to a grievous hurt wherein the bone is fractured and dislocated. This classification under Section 337-A(iv) of the Pakistan Penal Code (PPC) renders the accused liable to *Arsh*, which constitutes 15% of the *Diyat*, along with a possible term of imprisonment extending up to ten years.
- B. **Ghair Jaifah Munqqilah:** This type of injury, defined under Section 337-E(vi) of the PPC, involves the fracture and dislocation of a bone but does not extend to the body cavity of the trunk. The punishment prescribed includes *Daman* (compensatory damages) and may also entail a term of imprisonment extending up to seven years.
- C. **Ghair Jaifah Damiyah:** This pertains to an injury where the skin is ruptured, resulting in bleeding, but does not involve the exposure of bone. As per Section 337-E(i) of the PPC, the punishment for this form of injury includes *Daman* and may extend to a term of imprisonment of one year.

9. Although learned counsel for the applicant has contended that the medical certificate has been duly challenged, it is an established principle of law that mere challenge to a piece of evidence does not, **ipso facto**, render it nugatory unless it is judicially declared infirm

or unreliable. At this stage, the medico-legal certificate remains a substantive piece of evidence, duly forming part of the record, and continues to hold evidentiary value unless rebutted through cogent and unimpeachable evidence. Furthermore, the nature of the injuries sustained by the victim, as delineated in the medico-legal certificate, is grievous in character and falls within the mischief of the prohibitory clause of Section 497 of the Code of Criminal Procedure, 1898. The doctrine of **prima facie** evidence dictates that at the bail stage, the Court is not required to conduct a meticulous inquiry akin to a full-fledged trial, but rather to assess whether reasonable grounds exist for believing that the accused has committed the alleged offence. Given that the injuries in question include **Shajjah-i-Munaqqilah**, which entails fracture and dislocation of the bone, the statutory prescription under Section 337-A(iv) of the Pakistan Penal Code (PPC) is duly attracted, carrying a punishment extending up to ten years, coupled with the liability of *Arsh* amounting to 15% of *Diyat*. The gravity of the offence, coupled with the severity of the punishment prescribed, thus warrants the application of the rule **in favorem vitae libertatis et innocentiae omnia praesumuntur**—that all presumptions should be made in favour of life, liberty, and innocence—yet, such presumption is not absolute where *prima facie* involvement is discernible from the record.

10. It is a well-settled principle that in bail matters, the Court must exercise its discretion judiciously, ensuring that the statutory mandate of law is not defeated through misplaced leniency. The concept of **falsus in uno, falsus in omnibus**—that falsehood in one aspect does not necessarily invalidate the entire case—does not operate at this stage to undermine the veracity of the medical record, unless convincingly established otherwise in trial.

11. Consequently, in light of the grievous nature of the injuries inflicted, the categorical assignment of a specific role to the applicant in the commission of the alleged offence, and the fact that the case squarely falls within the prohibitory clause of Section 497 Cr.P.C,

the applicant Khair Muhammad is not entitled to the extraordinary concession of bail. Accordingly, his bail application stands dismissed.

12. The accused, Muhammad Ramzan, has been ascribed a specific role in the instant crime, whereby he inflicted injuries upon the injured Asif using the butt of a rifle. The medico-legal certificate establishes that the injuries sustained were classified as *Shajjah-i-Ammah* and *Shajjah-i-Khafifah*, which, under Section 337-A of the Pakistan Penal Code (PPC), entail distinct legal consequences. *Shajjah-i-Khafifah* is defined as an injury to the head or face that does not expose the bone. The punishment prescribed for this offence is *daman* and an imprisonment term extending up to two years as *ta'zir*. *Shajjah-i-Ammah*, on the other hand, involves a fracture of the skull so that the wound touches the membrane of the brain, making the accused liable to *arsh* amounting to one-third of *diyat*, along with imprisonment of up to ten years.

13. Jurisprudentially, bail should not be withheld as a form of *anticipatory punishment*. The *rule of consistency (Per in parem causa paria iura)* dictates that where a co-accused is similarly placed or less culpable than others who have been granted bail, such an accused must also be treated accordingly. In the instant matter, accused Muhammad Ramzan stands on a better footing than co-accused Khair Muhammad in terms of the severity of injuries caused and the evidentiary weight against him.

14. As far as the miscellaneous application for the cancellation of bail of the remaining nominated accused namely Abdul Rehman, Asghar and Sajjad is concerned, the scope of cancellation of bail under **section 497(5), Cr.P.C.** has been elucidated in **Sami Ullah and another v. Laiq Zada and another [2020 SCMR 1115]** as follows:

“5. ...Bare perusal of provision of section 497(5), Cr.P.C. it do not demonstrate any specific ground to press into the pretense of said provision of law, however, superior courts of the country from time to

time have enunciated certain principles governing cancellation of bail and those are in field with unanimous concurrence since considerable time. Those are enumerated as under:-

- i) If the bail granting order is patently illegal, erroneous, factually incorrect and has resulted into miscarriage of justice.*
- ii) That the accused has misused the concession of bail in any manner.*
- iii) That accused has tried to hamper prosecution evidence by persuading/pressurizing prosecution witnesses.*
- iv) That there is likelihood of absconion of the accused beyond the jurisdiction of court.*
- v) That the accused has attempted to interfere with the smooth course of investigation.*
- vi) That accused misused his liberty while indulging into similar offence.*
- vii) That some fresh facts and material has been collected during the course of investigation which tends to establish guilt of the accused.”*

15. In view of the foregoing, I find myself in complete agreement with the legal opinion rendered by the learned Additional Sessions Judge, Kandiro, while granting bail to the accused persons, namely Abdul Rehman, Asghar Ali, and Sajjad, vide order dated 29-06-2024. The judicial reasoning underlying the grant of bail to the aforementioned accused persons withstands legal scrutiny and does not suffer from any palpable illegality, jurisdictional defect, or misapplication of legal principles that would warrant interference by this Court. The alleged injuries attributed to the said accused neither targeted nor affected any vital or critical part of the victim's body. The gravity of the injuries, therefore, does not cross the threshold required to invoke the prohibitory clause of Section 497 Cr.P.C. The principle *bail is the rule, jail is the exception* remains a cornerstone of criminal jurisprudence, and mere allegations, devoid of substantial aggravating factors, do not justify curtailing the liberty of an accused. It is a well-settled proposition of law that the benefit of bail cannot be recalled in a mechanical manner unless compelling reasons exist that demonstrably impinge upon the course of justice.

16. Furthermore, the parameters enunciated by the Honourable Supreme Court in ***Sami Ullah and another v. Laiq Zada and another*** [2020 SCMR 1115] governing the cancellation of bail do not stand satisfied in the present case. The order granting bail does not suffer from any patent illegality, nor does it result in any miscarriage of justice. No cogent material has been placed on record to establish that the accused have misused the concession of bail, interfered with the investigation, attempted to influence prosecution witnesses, or indulged in any conduct that would bring their case within the ambit of exceptional circumstances warranting the cancellation of bail. The prosecution has also failed to demonstrate any subsequent development amounting to fresh incriminating evidence that would justify the recall of bail. Given the settled legal position that cancellation of bail is an extraordinary remedy, not to be exercised in a routine or arbitrary manner, and in the absence of any supervening circumstances that would disturb the balance of justice, I do not find any justification for interfering with the well-reasoned order passed by the learned Additional Sessions Judge, Kandiaro **Accordingly, the miscellaneous application for the cancellation of bail against accused Abdul Rehman, Asghar and Sajjad stands dismissed.**

17. Summarily, the bail applications of applicants **Khair Muhammad** and **Muhammad Ramazan** are **dismissed** due to grievous nature of the injury (explained in Paras- 8,9,10,12 & 13).

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

J U D G E

Ahmad