

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

Cr Bail Application No.S-106 of 2025

Applicant(s): **Riaz Ahmed & Mohsin Ali** are present along with their counsel Mr. Saifullah Soomro, Advocate.

Respondent: The State, through Syed Sardar Ali Shah, Additional Prosecutor General.

Date of hearing: **24-02-2025**

Date of decision: **28-02-2025**

ORDER

RIAZAT ALI SAHAR, J- Through this single order, I dispose of the instant bail application filed by the applicants, Riaz Ahmed and Mohsin Ali, seeking pre-arrest bail in Crime No. 03 of 2024, registered at Police Station Yaru Lund, under Sections 364, 147, 148, 302, and 201 of the Pakistan Penal Code. The applicants, in their earlier Criminal Bail Application, had been denied the relief of pre-arrest bail by the learned Additional Sessions Judge-I, Mirpur Mathelo. They now invoke the jurisdiction of this Court by way of the present application filed under Section 498-A of the Code of Criminal Procedure, seeking the same relief.

2. As per the contents of the FIR lodged by the complainant, Ghareebo Muhammadani, it has been alleged that Raja, aged approximately 21 to 22 years, was his brother and worked as a motorcycle driver in City Yaro Lund. On 17.12.2023, at about 4:00 p.m., the complainant, along with his brother Raja, Shahmor, and his cousin Abdul Khaliq, was standing at Imam Wah Pull in City Yaro Lund when accused Ameer, Zameer, Nihal, and Atur, all by caste Musani, along with three unidentified individuals, arrived at the scene. Upon their arrival,

the accused persons invited Raja to accompany them to *Ranipur Mela* on a rented motorcycle. In the presence of the complainant party, Raja went away with the accused persons for the said visit. However, after two days had passed, Raja's mobile phone was found to be switched off. The complainant party then contacted the accused persons via mobile phone to inquire about Raja's whereabouts. The accused responded that they had returned from *Ranipur Mela*, but Raja had not returned with them. When the complainant party insisted on Raja's return, the accused continued to give assurances, yet Raja remained missing despite their continuous search. Ultimately, on the day of lodging the FIR, the complainant party consulted a *Nekmard* (a community elder) and, upon his advice, registered the present FIR.

3. It is, *inter alia*, contended by the learned counsel for the applicants that they are innocent and have been falsely implicated in the present case with *mala fide* intentions and ulterior motives. It is submitted that the applicants were initially granted post-arrest bail by the learned trial Court vide order dated 19.04.2024; however, following the insertion of Sections 302 and 201 of the Pakistan Penal Code, they filed a pre-arrest bail application, which was subsequently dismissed by the learned trial Court vide order dated 23.01.2025. The learned counsel further argued that there is an inordinate delay of approximately four months in the lodgement of the FIR, for which no plausible explanation has been furnished by the complainant. Such an unexplained delay raises a strong presumption of false implication of the applicants after due consultation and deliberation. Moreover, it is contended that the mere recovery of the deceased's dead body does not establish any direct connection between the applicants and the alleged offence. It is further argued that the names of the applicants were not mentioned in the FIR; rather, they were subsequently implicated through statements recorded under Sections 161 read with 162 Cr.P.C without any proper identification parade. Additionally, the complainant has failed to specify the time or place where he

allegedly identified the unknown persons. The learned counsel also contended that, in reality, the applicants were unlawfully picked up by the police, prompting their relatives to file an application under Section 491 Cr.P.C. Upon a raid being conducted at Police Station Yaru Lund, the local police, out of resentment, falsely implicated the applicants in the present case. Lastly, the learned counsel prayed for the grant of bail.

4. Conversely, the learned Additional P.G for the State opposed the grant of bail to the applicants.

5. Having heard the learned counsel for the respective parties and meticulously examined the record, it is evident that, admittedly, the applicants were granted post-arrest bail by the trial Court vide order dated 19-04-2024. However, subsequent to the insertion of Sections 302 and 201 PPC in the Challan, the applicants preferred a pre-arrest bail application, which was dismissed by the trial Court vide order dated 23-01-2025. Notably, the said order does not provide any justification as to why, after the grant of post-arrest bail, the same bail could be cancelled merely on the ground that additional sections were incorporated in the Challan. It is a fundamental duty of the Court to adjudicate applications under Section 497 Cr.P.C. on their merits. The mere insertion of additional sections does not, in itself, empower the same trial Court to revoke bail, particularly when there is no issue pertaining to jurisdiction. Even after the inclusion of the aforementioned sections, the trial Court remains fully competent to try the case. Any deviation from this principle must be founded on well-established legal grounds, failing which such an approach would amount to a violation of the settled principles of law governing bail jurisprudence.

6. Moreover, there is an inordinate delay of four months in the registration of the FIR, which remains unexplained by the complainant in any plausible manner. Admittedly, the names of the applicants do not appear in the FIR; however, they have been

implicated in this case solely on the basis of statements recorded under Section 161 read with Section 162 of the Code of Criminal Procedure (Cr.P.C.) and their subsequent implication was not recognized through any identification parade before the Magistrate. Furthermore, the FIR does not attribute any specific role to the applicants in the commission of the alleged offence. The learned counsel for applicants contended that the applicants were kept in illegal confinement by the police, prompting their relatives to file an application under Section 491 of the Cr.P.C. Consequently, a raid was conducted at Police Station Yaru Lund, and thereafter their arrest was managed by the police and the applicants were implicated in the present case. This sequence of events prima facie indicates mala fide intent on the part of both the complainant and the police, raising serious concerns regarding the veracity of the allegations levelled against the applicants.

7. 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* as contemplated under the law. Additionally, there exists a discernible element of *mala fide* on the part of the prosecution, thereby casting doubt upon the bona fides of the case. Accordingly, the instant pre-arrest bail application is hereby **allowed**, and the interim pre-arrest bail earlier granted to the applicants by this Court vide order dated 10-02-2025 is **confirmed** on the same terms and conditions.

8. 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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