

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No.S-87 of 2025

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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For hearing of bail application

Date of hearing **20.02.2025**
Date of order **20.02.2025**

Mr. Mushtaque Ahmed Shahani, Advocate for applicants
alongwith applicants (on bail).

Syed Sardar Ali Shah, Addl. Prosecutor General, Sindh.

ORDER

Riazat Ali Sahar, J. Through the instant bail application, the applicants/accused, namely Allah Bachayo, Gulzar, Bisharat, and Riaz Ali, seek pre-arrest bail in Crime No. 340 of 2024, registered at Police Station Kandiaro, District Naushahro Feroze, for offences punishable under Sections 337A(i), 337F(i), 337F(vi), 337F(v), 504, 147, and 148 of the Pakistan Penal Code.

2. The earlier bail plea of the applicants was declined by the learned Sessions Judge, Naushahro Feroze, vide order dated 22.01.2025, in Criminal Bail Application No. 100 of 2025.

3. The brief facts, as narrated in the FIR, are that the complainant, Faheem Ali, lodged the FIR on 24.11.2024, stating therein that he operates a puncture repair shop located at the National Highway Town. He alleged that one Allah Bachayo Mastoi harboured animosity towards him due to a family dispute. On 18.11.2024, after closing his

shop, the complainant was on his way home when, upon reaching the link road near Regulator Mori, close to Shaheedan Wari Mori, he encountered six individuals standing by the roadside. He identified them as Allah Bachayo, who was armed with an iron rod; Gulzar, who was holding a *lathi*; Dildar, who was also armed with a *lathi*; Bisharat, similarly armed with a *lathi*; Riaz, carrying a *lathi*; and Jinsar, who was likewise armed with a *lathi*. It is alleged that the accused stopped the complainant and that Allah Bachayo struck him with an iron rod on his left arm, while Riaz inflicted a blow with an iron rod on his right hand. The remaining accused allegedly assaulted him with *lathi*blows. The complainant raised a hue and cry, upon which Zubair and Naeem arrived at the scene and intervened, requesting the accused to desist. Following this intervention, the accused allegedly hurled verbal abuse at the complainant before leaving the scene. Subsequently, the complainant proceeded to the police station, where he lodged the present FIR.

4. The learned counsel for the applicants contends that the parties have strained relations over a minor dispute, a fact that has been admitted by the complainant in the FIR. He further submits that there is an unexplained delay of approximately seven days in the lodgement of the FIR, which casts doubt upon the prosecution's case. The learned counsel also argues that all the offences invoked in the FIR are bailable except Section 337F(v) and 337F(vi) PPC which do not fall within the ambit of Prohibitory clause of Section 497 Cr.PC as well as vital part of

the body. Furthermore, he submits that after furnishing surety before this Court, the accused have duly joined the trial proceedings and have not misused the concession of interim pre-arrest bail extended to them vide order dated 03.02.2025. In view of the foregoing, he contends that the investigation has been completed, report/challan u/s 173 Cr.P.C has been submitted, the applicants are no more required to the police for further investigation and case against the applicants falls within the ambit of *further inquiry*. He, therefore, prays that the interim pre-arrest bail granted to the applicants be confirmed.

5. On the other hand, the learned Additional Prosecutor General, appearing on behalf of the State, opposes the bail application on the ground that the applicants are specifically nominated in the FIR with a clear role in causing injuries to the complainant. He contends that the ocular account is duly corroborated by medical evidence; therefore, the applicants do not deserve any leniency in the form of anticipatory bail.

6. Heard arguments of learned Counsel for the parties and perused the record meticulously.

7. Admittedly, the alleged incident took place on 18-11-2024, whereas the FIR thereof was lodged on 24-11-2024, reflecting an inordinate delay of more than seven days. However, the complainant has failed to furnish any plausible explanation for such an extensive delay. It is a well-settled principle of law, as consistently held by the Superior Courts, that unexplained delay in lodging an FIR is fatal to the prosecution's case, as it creates serious doubts regarding the

veracity of the allegations. With regard to the role attributed to the applicant Allah Bachayo and Riaz, it is alleged that they were armed with an iron rods and inflicted blows upon the complainant. However, the injury purportedly sustained by the complainant through accused Allah Bachayo and Riaz were declared by the Medico-Legal Officer to be *Jurh-Ghyr Jaifah Hashimah and Jurh-Ghyr Jaifah Munaqillah*, punishable under Section 337F(v) and 337F(vi)P.P.C, having punishment extendable up to 05 and 07 years. As for the all other accused, they are alleged to have been armed with *lathis* and have inflicted a *lathi* blow on the complainant, but the injuries sustained were medically classified as bailable offences. These allegations are yet to be substantiated by the prosecution through the recording of evidence. Moreover, the parties are already on strained terms due to a trivial dispute concerning their children. Given this background, *mala fide* on the part of the prosecution cannot be ruled out. In my considered view, the fundamental criteria for the grant of bail, as laid down by the Honourable Supreme Court in the case of **Rana Muhammad Arshad v. Muhammad Rafique and another (PLD 2009 Supreme Court 427)**, are squarely attracted in the present case. Therefore, all the applicants are entitled to the extraordinary relief of anticipatory bail.

8. With regard to the contention of the learned Addl. Prosecutor General that the delay in lodging the FIR has been duly explained, it is observed that the law relied upon by him bears no relevance to the

facts and circumstances of the present case. Therefore, the arguments advanced by the learned Additional Prosecutor General are devoid of merit and do not carry any legal force. As regards the nature of the injury and the allegations in the instant case, I find myself fortified by the dicta laid down by the Honourable Supreme Court of Pakistan in the case of *Khalil Ahmed Soomro and others v. The State* (PLD 2017 SC 730), and I am of the considered opinion that the case against the applicants falls within the ambit of *further inquiry* as contemplated under the law. Moreover, given the pre-existing strained relations between the parties, the possibility of false implication of the accused due to *mala fide* intent cannot be ruled out. In this regard, reliance can be placed upon the judgment of the Honourable Supreme Court in *Muhammad Tanveer v. The State and another* (PLD 2017 Supreme Court 733), which underscores the necessity of scrutinising allegations critically **in cases where enmity between the parties exists.**

9. The upshot of above discussion is that the applicants namely Allah Bachayo, Gulzar, Bisharat, and Riaz have successfully make out a good *prima facie* case for further inquiry within meaning of Sub-Section (2) of Section 497 Cr.P.C. Accordingly, instant bail application is hereby allowed. The interim pre-arrest bail already granted to applicants vide order dated **03.02.2025 is hereby confirmed** on same terms and conditions. The applicants present are directed to continue their appearance before trial Court, till final decision of main case.

10. Needless to mention here that observation made herein above are tentative in nature and trial Court may not be influenced of the same and decide the case on its own merits as per evidence and the material made available before it.

Bail application is allowed.

J U D G E

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