

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Bail Appln. No.57 of 2025

Applicants

Intiaz Khatoon & Shumaila : through Mr. Sabir Ali Samo,
Advocate.

The State : through Mr. Khalil Ahmed Maitlo,
D.P.G. Sindh for State.

Complainant,
Shahid Hussain Ghanghro. : through Miss. Rizwana Jabeen Siddique,
Advocate.

Date of hearing. : 10.03.2025

Date of Order. : 10.03.2025

ORDER

Ali Haider 'Ada', J. Through this bail application, the applicants/accused Intiaz Khatoon and Shumaila, seek post-arrest bail in Crime No.91 of 2024, registered under section 395, 342 PPC at Police Station, Setharja district Khairpur as such incident was reported on 17.11.2024 while the date of incident is also mentioned in the FIR as 17.11.2024.

2. Earlier the bail plea of the applicants was declined by the learned Additional Sessions Judge, Mirwah vide order dated 14.01.2025 in Criminal Bail Application No.44 of 2025.

3. The crux of prosecution case as unfolded in the FIR are that complainant party have their agricultural land and there is also one factory of bricks which were handled through Tractor-Trolley as well as complainant have one cattle pan wherein buffalos and other animals tethered. On the day of incident when they went to sleep it was night time, they woke-up on the cries of watch-man and five male persons armed with weapons and lathis whereas two ladies were standing out of which they identified accused Manzar armed with pistol and Madad Ali armed with pistols while two unidentified persons also having pistols in their hands and

one was having gun. The accused party locked complainant in a room they saw from window that accused persons on the force of weapons took away cattles from cattle pan put the same in Tractor-Trolley fled away alongwith Tractor-Trolley. Complainant then appeared at Police Station and lodged such FIR.

After registration of FIR in Crime No.91 of 2024 the police secured property in Crime No.92 of 2024 on the point that the accused persons after encounter were apprehended alongwith case property and separate FIR u/s 324, 353, 412 PPC were registered at same Police Station.

4. Learned Counsel for the applicants/accused submits that there is no role attributed to ladies applicants and only they were accompanied with co-accused. So far as the question of recovery is concerned, which was reported in Crime No.92 of 2024 in which both the ladies/bail applicants were granted post arrest bail by the same learned trial Court vide order dated 14.01.2025. He also places on record certified copy of order dated 14.01.2025. He further submits that applicants as per FIR were empty handed and their names are not transpires in the FIR. He prays for grant of bail to the applicant. In support of contentions he places reliance upon the case of *Gul Rehman alias Gul Muslim v. The State (2012 YLR 1146)*.

5. On the other hand learned counsel for complainant contended that FIR was registered promptly and recovery was also effected as there is specific allegations against applicants that they were accompanied in order to facilitate the principal accused. She further submits that ladies accused were also with lathis as they were not with empty handed. In support of her contentions she places reliance upon the cases reported in the case of *Laique Shah v. The State (2004 P.Cr.LJ 697)* and *Hamood-ur-Rehman v. The State (2008 YLR2724)*.

6. Learned Deputy Prosecutor General for the State adopted the arguments advanced by learned counsel for complainant and also supported her version on the ground that learned trial Court is justified, as the offence falls under prohibitory clause.

7. I have heard the learned Counsel for the parties and have examined the material available on record.

8. This bail application pertains to female accused and first of all the merits of the case are to be considered. The Section 497(1) Cr.P.C, looked in to the case of applicants; however, same is being re-produced as under;

“497. When bail may be taken in cases of non-bailable offence (1) when any person accused of non-bailable offence is arrest or detained without warrant by an officer-incharge of a police station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appears reasonable grounds for believing that he has been guilty of an offence punishable with death or [imprisonment for life or imprisonment for ten years].

Provided that the Court may direct that any person under the age of sixteen years [or any woman] or any sick or infirm person accused of such an offence be released on bail.

Second, third and fourth proviso as added by Ordi.V of 2010 omitted by Act VIII of 2011.

Provided further that a person accused of an offence as aforesaid shall not be released on bail unless the prosecution has been given notice to show cause why he should not be so released.

Provided further that the Court shall, except where it is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf, direct that any person shall be released on bail.

(a) Who, being accused of any offence not punishable with death, has been detained for such offence for a continuous period exceeding one year or in case of woman exceeding six months and whose trial for such offence has not concluded; or

(b) Who, being accused of an offence punishable with death, has been detained for such offence for a continuous period exceeding two years and in case of a woman exceeding one year and whose trial for such offence has not concluded;

Provided, further that the provisions of the foregoing proviso shall not apply to a previously convicted offender for an offence punishable with death

or imprisonment for life or to a person who in the opinion of the Court, is a hardened, desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life.

In case of *Mst. Ghazala v. The State and another* reported in 2023 SCMR 887. The Honourable Apex Court in para-4 has held that;

“No doubt, the offence of Qatl-e-Amd (intentional murder) punishable under section 302, PPC alleged against the petitioner falls within the prohibitory clause of section 497(1) of the Code of Criminal Procedure, 1898 (“Cr.P.C.”) but being a women, the petitioner’s case is covered by the first proviso to section 497(1), Cr.P.C.”

9. Further record reflects that both female applicants were granted post-arrest bail in subsequent FIR which pertains to main offence of recovery and thus in that FIR in which they were granted bail. The lathis were also not recovered from the present applicants at the time of their arrest. Prima facie, the applicants had no active participation/role as per contents of FIR except mere their presence at spot. In case of *Bahadur v. The State & another* reported in SBLR 2025 Sindh 193, it was held by this Court that;

“The bail application was opposed only on the ground that alleged weapon was recovered from applicant Bahadur and the cartridge so recovered from the place of incident met with alleged KK; however learned counsel for the complainant as well as learned Additional Prosecutor General conceded that there is no direct role against the present and since no role has been assigned to the present applicant, therefore, the case of the applicant requires further inquiry. The active role has been assigned against co-accused, who are not before the Court. Insofar as the aspect of sharing common intention in the commission of offence, the same is to be decided by the trial Court after recording evidence. It is settled principle that bail applications are to be decided tentatively and deeper appreciation is not permissible at bail stage.”

10. In view of above, I am of the considered view that applicants/accused have been able to make out a case for grant of bail. Accordingly, instant bail application is allowed. The applicants/accused, namely, ***Mst. Imtiaz Khatoon wife of Bhooral***

Mahar and Mst. Shumaila wife of Madad Ali Khaskheli are granted post-arrest bail subject to their furnishing solvent surety in the sum of Rs.50,000/- each (Rupees Fifty thousand) and PR bond in the like amount to the satisfaction of the trial Court.

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

12. Bail application stands disposed of in the above terms.

JUDGE

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