

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

*Cr Bail Application No.S-592 of 2024*

Applicant(s): **Imtiaz Hussain & Mukhtiar**, both by caste Phulpoto are present along with Mr. Abdul Ghani Abro, Advocate.

Complainant: **Nadeem Ali** is present along with his counsel Mr. Muhammad Bux Banghwar, Advocate.

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

Date of hearing: **06.02.2025**  
Date of decision: **06.02.2025**

**ORDER**

**RIAZAT ALI SAHAR, J-** Through the instant criminal bail application, the applicants seek the concession of pre-arrest bail in connection with FIR No.83 of 2024, registered at Police Station Pir Jo Goth-Khairpur, for offences punishable under Sections 324, 337A(ii), 337U, 506/2 & 504 PPC. The applicants, having been denied the relief of pre-arrest bail by the learned Additional Sessions Judge-II, Khairpur, now invoke the jurisdiction of this Court by way of the present application under Section 498-A Cr.P.C, seeking the same relief.

2. It is alleged in the FIR lodged by complainant Nadeem Ali on 19.06.2024 that on 18.06.2024 he was busy in watering his land along with his paternal cousin Muhammad Younis and nephew Ameer Bux, where applicant Imtiaz Hussain came and restrained the complainant party from watering the land and on reply by complainant party, said applicant/accused became annoyed and thereafter applicant with hatchet, Aijaz with pistol, Mukhtiar with hatchet, Papan with hatchet, Khalid with lathi, Zubair alias Godri, Nawaz and Munir Ahmed with lathies, all by

caste Phulpoto came and on the instigation of co-accused Nawaz Phulpoto, applicant Imtiaz gave hatchet blow to Ameer Bux, applicant Mukhtiarkar gave hatchet blow hitting Ameer Bux on his nose and accused Zubair alias Godri also gave hatchet blow to Ameer Bux hitting on upper lip, who fell down. Thereafter, accused left the scene of offence. Then injured was taken to hospital at Pir Jo Goth, where he remained under treatment. Consequently, above FIR was lodged.

3. Learned counsel for the applicants/accused submits that the applicants are innocent and have maliciously been involved in this case due to dispute between the parties over landed property; that prior to this complainant party had also registered numerous cases against the applicants party bearing crime No.21 of 2019 and crime No.193 of 2015 at P.S, Pir Jo Goth so also Crl. Misc. Application No.56 of 2016 for registration of FIR and Crl. Complaint No.58 of 2019 under section 3&4 Illegal Dispossession Act and Crl. Direct Complaint under section 200 CrPC; that there is inordinate delay of one day in lodgement of FIR with no reasonable explanation; that co-accused namely Aijaz Ali, Munir Ali, Muhammad Nawaz, Khalid and Zubair have been admitted to pre-arrest bail by the trial Court. Lastly, learned counsel prayed for confirmation of bail.

4. Learned counsel appearing on behalf of complainant opposes the grant of pre-arrest bail on the ground that applicants are nominated in the FIR with specific role of causing hatchet blows to injured; that all the PWs have fully implicated the present applicants in the commission of alleged offence; that case of the present applicants is entirely different to that of co-accused, who have been admitted to pre-arrest bail by the trial Court; that there is no element of mala fide intention on the part of the complainant; that there is sufficient material available on record to connect them with the commission of alleged offence.

5. Learned Additional Prosecutor General while adopting the arguments so advanced by learned counsel for complainant

also opposes the confirmation of interim pre-arrest bail earlier granted to them by this Court vide order dated 29.08.2024.

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

7. It is imperative to assess the roles attributed to both applicants in light of the principles governing bail jurisprudence. The gravity of the offence, nature of injuries caused, and the likelihood of misuse of concession of bail are factors requiring careful consideration.

8. The fundamental principle in bail matters, as enshrined in *Mohammad Siddique v. Imtiaz Begum & Others* (2002 SCMR 442), dictates that bail in non-bailable offences is not a matter of right, particularly where prima facie evidence exists to link an accused with the commission of the offence. However, the court is also mindful of the legal maxim *in dubio pro reo*, which posits that when doubt exists, it must be resolved in favour of the accused.

9. Insofar as applicant Imtiaz Hussain is concerned, the allegations levelled against him relate to causing a hatchet blow to Ameer Bux. The medico-legal certificate does not reflect grievous injury in terms of *Shajjah-i-Mudihah* or *Jurh Ghayr Jaifah Munaqqilah*, as defined under Sections 337-A(ii) and 337-F(i) PPC. Furthermore, the delay in lodging the FIR remains unexplained, which introduces an element of doubt as to the true genesis of the occurrence, warranting further inquiry within the meaning of Section 497(2) Cr.P.C., as upheld in *Haleem Rajar v. The State*(2020 YLR Note 66). Consequently, in the absence of sufficient material to conclusively implicate him, the benefit of bail must be extended in his favour.

10. Conversely, accused Mukhtiar has been attributed a specific role of inflicting a hatchet blow to the complainant's face, causing the fracture of tooth No. 21 (upper right) and lower right 1, as corroborated by the medical certificate. Such an injury falls

under *Jurh Ghayr Jaifah Hashimah*, punishable under Section 337-A(ii) PPC. The principle laid down in *Shameel Ahmed v. The State* (2009 SCMR 174) stipulates that where an accused is assigned a direct role in causing grievous hurt, bail may be refused. Furthermore, the principle of *falsus in uno, falsus in omnibus*; false in one thing, false in everything, does not automatically apply in bail proceedings, and each case must be considered on its own merits, as elaborated in *Zafar Iqbal v. The State* (2021 SCMR 1909). In the present case, the ocular and medical evidence sufficiently connects accused Mukhtiar with the commission of the offence, thereby disentitling him from the concession of bail.

11. It is essential to distinguish between the bail application of Imtiaz and that of Mukhtiar. The role attributed to Imtiaz is not of a grievous nature, and the injuries alleged do not attract severe penal consequences under the prohibitory clause of Section 497 Cr.P.C. The principle of *bail, not jail* applies where doubt exists regarding the involvement of an accused in an offence of a lesser degree. In contrast, Mukhtiar's role is directly linked with inflicting serious injuries on the complainant, which attract penal provisions carrying severe punishment. The Honourable Supreme Court in *Muhammad Rafique v. The State* (PLD 2022 SC 694) has categorically stated that an accused whose role in the offence is directly connected with causing grievous injuries should not be granted bail as a matter of course.

12. Another aspect requiring consideration is the likelihood of tampering with prosecution evidence. In *Muhammad Rafique v. The State* (PLD 2022 SC 694), the Honourable Supreme Court underscored that where an accused may influence witnesses or hinder the course of justice, bail should be refused. In the present case, the complainant and prosecution witnesses have consistently maintained their stance against accused Mukhtiar, and there exists a plausible apprehension that granting him bail may impede the smooth trial process.

13. Moreover, the element of judicial discretion in bail matters must be exercised judiciously, ensuring that undue hardship is not caused to an accused who may not have played an active role in the commission of the offence. As held in *2021 MLD 166*, where an accused has a case for further inquiry and lacks a direct role in the grievous injuries inflicted, he should not be denied bail arbitrarily. The court must always maintain a balance between safeguarding the interests of justice and upholding the constitutional right of liberty.

14. In light of the foregoing, the bail application of **accused Imtiaz Hussain is allowed**, consequently the interim pre-arrest already granted to him vide order dated 29.08.2024 is confirmed on same terms and conditions. However, the bail application to the extent of **accused Mukhtiar is dismissed**, as such the interim pre-arrest bail already granted to him in terms of order dated 29.08.2024 is hereby recalled/vacated. Let such intimation be sent to concerned Police Station.

15. The trial court is directed to expedite the proceedings and conclude the trial at the earliest, ensuring that justice is served without unnecessary delay (*fiat justitia ruat caelum*).

**J U D G E**