

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Bail Application No. S-159 of 2025

Applicants : 1. Nadir s/o Haji Mir Muhammad Jatoi
2. Fida Hussain s/o Haji Mir Muhammad Jatoi
Through Mr. Athar Abbas Solangi, Advocate

Complainant : Through Mr. Habibullah G. Ghouri, Advocate

Respondent : The State
Through Mr. Nazeer Ahmed Bhangwar, DPG

Date of hearing : 23-07-2025
Date of order : 31-07-2025

ORDER

KHALID HUSSAIN SHAHANI, J. –Applicants, Nadir and Fida Hussain, seek post arrest bail in a case bearing Crime No. 03 of 2024, registered at Police Station Rahmatpur, for offences punishable under Sections 302, 396, 114, 34, PPC. The instant application follows the dismissal of their previous bail application (No. 184 of 2024) by the learned Additional Sessions Judge-VII, Larkana, vide order dated January 21, 2025.

2. The prosecution's case originates from an FIR lodged by complainant Farman Ali Kalhoro on January 5, 2024, at 14:00 hours. The complainant alleged that on the same day, at about 00:30 hours, while he, his brother Ali Bux (deceased), and two cousins (Sajjad Ahmed and Hamid Ali) were present at their Kiryana and General store, five armed individuals, identified as Saleem Khan alias Islam, Nadir (applicant No.1), Fida Hussain (applicant No.2), Nakoo, and one unidentified person, arrived on two motorcycles. They allegedly entered the shop, pointed pistols at the occupants, and robbed Rs. 77,000/- from the counter, Rs. 2,000/- from the complainant, and Rs. 5,000/- from Sajjad Ahmed. According to the FIR, upon the deceased Ali Bux stating they had no more money, accused Nakoo allegedly instigated Saleem Khan @ Islam to kill Ali Bux. It is further alleged that Saleem Khan alias Islam fired a shot, which Ali Bux dodged, but a subsequent straight shot hit Ali Bux in the chest, causing his demise. The accused then fled with the robbed money and weapons. The complainant narrated that after taking the injured deceased to the hospital where death was confirmed, informing the police, and

conducting postmortem and funeral rites, he lodged the FIR after consulting with his elders. The applicants were subsequently arrested on January 8, 2024, allegedly with pistols, and a challan was submitted after investigation.

3. Learned counsel for the applicants, Mr. Athar Abbas Solangi, reiterated the contentions made before the lower court and further elaborated upon them. He asserted that the applicants are innocent and have been falsely implicated with mala fide intentions. He underscored the delay of more than 13 hours in lodging the FIR, contending that the explicit mention in the FIR of consultation with "respectables" prior to its registration strongly suggests deliberation and concoction of the prosecution story rather than a spontaneous report of an incident. Counsel emphasized that no specific role of firing or direct instigation in the murder has been attributed to the present applicants (Nadir and Fida Hussain) in the FIR. The firing is specifically attributed to co-accused Saleem Khan @ Islam Jatoi, and the instigation to co-accused Nakoo. He argued that this absence of a direct, active role in the fatal act brings the applicants' case within the ambit of "further inquiry" under Section 497(2) Cr.P.C. A crucial point raised was the Forensic Science Laboratory (FSL) report dated January 17, 2024, which concluded that none of the empties recovered from the place of incident matched with the pistols allegedly recovered from the applicants. Learned counsel strongly argued that this scientific evidence directly severs the link between the applicants' alleged weapons and the crime, thereby negating the prosecution's claim of their direct involvement in the firing, and making their guilt a matter for further inquiry. He further contended that the prosecution story, from a bare reading of the FIR, appears unbelievable and contrived. It was also submitted that the applicants were subjected to illegal detention by the police for a couple of days prior to their formal arrest. Finally, counsel stressed that the applicants are not dangerous criminals, have no previous convictions.

4. Learned Additional Deputy Prosecutor General along with learned counsel for the complainant, vehemently opposed the bail application. They contended that the applicants are directly implicated in the FIR and that sufficient evidence exists to establish their involvement in the dacoity and the subsequent murder. They argued that the applicants were part of the mob equipped with weapons and shared a common object in the commission of the offence under Section 34 PPC, making them equally culpable for the murder

committed during the dacoity under Section 396 PPC. The lower court's order dated January 21, 2025, notes that while the FIR was lodged at 14:00 hours on the same day as the incident (00:30 hours), the complainant party took the deceased to the hospital, reported to the police, arranged postmortem, and after burial, lodged the FIR "while consulting with his respectables." The lower court found an "active involvement" of the applicants, asserting that their participation was "rather than their mere presence," given their alleged role in drawing pistols and committing dacoity. It was also noted that recovery of pistols was made from the applicants, which, in the lower court's view, connected them with the commission of the offence. The lower court opined that there were "reasonable grounds to believe" that the applicants committed the offence, thus attracting the prohibitory clause of Section 497(1) Cr.P.C. and distinguishing the cited case laws.

5. This Court has meticulously considered the arguments presented by both sides and has undertaken a thorough review of the record, including the contents of the FIR, the bail application, and the detailed order of the learned Additional Sessions Judge-VII, Larkana. The central question before this Court is whether there exist "reasonable grounds to believe" that the applicants have committed a non-bailable offence falling under the prohibitory clause of Section 497(1) Cr.P.C., or whether their case necessitates "further inquiry" as per Section 497(2) Cr.P.C.

6. The FIR was undoubtedly lodged with a delay of 13 hours and 30 minutes. While the lower court attempts to provide a narrative for this delay (hospitalization, postmortem, funeral, consultation), the very act of the complainant explicitly stating that the FIR was lodged "after consultation with my elders" is a crucial factor. This direct admission, recorded in the FIR itself, strongly indicates deliberation and a lack of spontaneity. The superior courts have consistently held that an unexplained or inadequately explained delay in lodging the FIR, particularly when coupled with evidence of prior consultation, creates a serious doubt as to the veracity and pristine nature of the prosecution's narrative. Such a delay tends to show that the FIR is not a natural outcome of the incident but a product of thought and discussion, susceptible to exaggeration and embellishment. This principle was forcefully articulated consistently, where unexplained delay in FIR, combined with proven enmity, was found to cast serious doubt. By analogy, deliberate consultation and a significant delay,

even in the absence of explicit enmity, can similarly raise a strong suspicion of concoction.

7. The FIR explicitly and unequivocally attributes the fatal firing to co-accused Saleem Khan @ Islam Jatoi, who allegedly fired on the instigation of co-accused Nakoo. The applicants, Nadir and Fida Hussain, are identified as part of the five members group, but no overt act of firing or direct instigation in the murder is assigned to them. While the prosecution invokes Section 34 PPC (common object) and Section 396 PPC (dacoity with murder), the absence of a direct, active, and fatal role for the applicants at this preliminary stage creates a clear case for "further inquiry" into their precise culpability in the murder itself. The determination of common object or shared intention requires a deeper evidentiary probe during trial, not a conclusive finding at the bail stage.

8. Most compelling factor in favor of the applicants is the Forensic Science Laboratory (FSL) report dated January 17, 2024. This scientific evidence conclusively indicates that the empties recovered from the scene of the incident *do not match* the pistols allegedly recovered from the applicants' possession. The lower court's order merely states that "recovery of the pistols from the applicants/accused at the time of their arrest which they used in the commission of the offence" connects them. However, this assertion is directly contradicted by the FSL report. If the weapons recovered from the applicants were not the ones from which the fatal shots were fired, their connection to the *murder* element of the crime, particularly in establishing their direct participation or specific role in causing death, becomes highly tenuous. This scientific discrepancy creates a significant dent in the prosecution's narrative linking the applicants directly to the use of a weapon that caused death, thereby squarely bringing their case within the ambit of further inquiry. The absence of a direct link between the recovered weapons and the crime, validated by forensic evidence, is a strong ground for bail, as it negates the "reasonable grounds to believe" that they personally committed the offence under Section 302 PPC.

9. It is a well-established principle that a court, while deciding a bail application, is only required to make a tentative assessment of the available material. It is not to embark upon a deep appreciation of evidence that would prejudice the trial. The very purpose of bail is to ensure the accused's presence during trial without pre-judging their guilt. In light of the unexplained and deliberated

delay in the FIR, the absence of a specific overt act of firing attributed to the applicants, and critically, the non-matching ballistic report of the recovered pistols with the empties found at the scene, this Court finds that the material presently available on record does not establish "reasonable grounds to believe" that the applicants have committed an offence falling under the prohibitory clause of Section 497(1) Cr.P.C. Instead, the inconsistencies and scientific findings render their guilt a matter that unequivocally requires further inquiry by the trial court.

10. The learned Additional Sessions Judge's conclusion that there are "reasonable grounds to believe" appears to have overlooked or insufficiently weighed the critical implications of the FSL report and the nature of the FIR's delay and contents. The case laws cited by the learned counsel for the applicants, which underscore the effect of delay in FIR and the need for careful scrutiny where direct active roles are absent, are indeed relevant to the facts and circumstances of this case.

11. For the foregoing reasons, especially given the scientific evidence contradicting the alleged use of weapons by the applicants and the inherent doubt arising from the delayed and deliberated FIR, this Court is satisfied that the applicants have made out a case for grant of post arrest bail.

12. In view of the detailed considerations above, the instant bail application is allowed. The applicants, Nadir and Fida Hussain, both sons of Haji Mir Muhammad, are directed to be released on bail subject to furnishing solvent surety in the sum of Rs. 200,000/- (Rupees Two Hundred Thousand Only) each, and furnishing a personal bond in the like amount to the satisfaction of the learned trial court.

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

J U D G E

Asghar Altaf/P.A