

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Criminal Bail Application No.S-441 of 2024

Applicant : Altaf s/o Muhammad Urs Magsi,
Through Mr. Safdar Ali Bhutto, Advocate

Complainant : Through Mr. Khadim Hussain Abro,
Advocate

The State : Through Mr. Nazir Ahmed Bangwar, DPG

Date of hearing : 30.07.2025

Date of order : 01.08.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicant Altaf Magsi, seeks post-arrest bail in a case bearing crime No.34/2023, registered at Police Station Behram for offences under Sections 302, 504, 147, 148, and 149 PPC. Previously bail of accused was dismissed by the learned Additional Sessions Judge-I, Shahdadkot.

2. The gravamen of the allegations, as encapsulated in FIR lodged by complainant Ghulam Murtaza on 17.05.2023, is that on 16.05.2023 at about 2330 hours, the applicant armed with a gun, in concert with eight other nominated and two unidentified accused persons, intercepted the complainant and his brother Tariq Ali Khoso (deceased). It is specifically alleged that co-accused Sardar Ali fired at the Tariq Ali, hitting his chest, whereafter the present applicant, Altaf Magsi, also fired at Tariq's neck. Co-accused Tarique Magsi also allegedly fired at the Tariq's neck. Subsequently, other co-accused are alleged to have inflicted blows with hatchets and lathies, resulting in the death of Tariq Ali Khoso at the scene. The motive is stated to be an annoyance over the deceased using a path near the accused persons' houses.

3. Learned counsel for the applicant has contended that the applicant is innocent and has been falsely implicated due to pre-existing enmity; that there is an unexplained delay of one day in the

registration of the FIR; that the witnesses are interested and closely related to the deceased; and that the allegations of firing are general in nature. The primary thrust of his arguments, however, is that the applicant has been incarcerated for a considerable period, and the trial has not concluded within the statutory period prescribed under the third proviso to Section 497(1), Cr.P.C., thus entitling him to the concession of bail.

4. Conversely, the learned Deputy Prosecutor General for the State has vehemently opposed the grant of bail. He argued that the applicant is nominated in the FIR with a specific and fatal role of causing a firearm injury to the neck of the deceased. He further submitted that the applicant's previous two bail applications were dismissed by the learned trial court on merits, most recently via a detailed order dated 29.07.2024. Critically, he contended that the delay in the conclusion of the trial is not attributable to the prosecution but is a result of dilatory tactics employed by the applicant and his counsel, who have sought numerous adjournments and filed successive applications.

5. Record shows that applicant is nominated in the FIR with the specific role of using a firearm and causing an injury to the neck of the deceased, a vital part of the body. The offence squarely falls within the prohibitory clause of Section 497(1), Cr.P.C. This Court is cognizant of the fact that the applicant's earlier attempts to secure bail were unsuccessful. The learned 1st Additional Sessions Judge, Shahdadt, in his order dated 29.07.2024, rightly observed that the second bail application before that court was filed without any fresh ground, a principle firmly settled by the Apex Court in a judgment reported as *PLD 1986 Supreme Court 173*.

6. The principal ground now being agitated is that of statutory delay. While the law provides a concession for an accused if the trial is not concluded within a certain timeframe, this concession is not an absolute or indefeasible right. In the present case, the statutory period has not been completed. Moreover, It is a discretionary relief that must be exercised judiciously. The benevolent provisions of the third and fourth provisos to Section 497(1), Cr.P.C. cannot be extended to an accused who is himself responsible for protracting the trial proceedings.

7. In the instant case, the record reflects that the delay in the trial's progress is largely, if not entirely, attributable to the conduct of the defense. The filing of successive applications and the seeking of adjournments on various pretexts have manifestly impeded the swift conclusion of the trial. An accused cannot be permitted to benefit from his own wrong by deliberately creating delays and then claiming bail on that very ground. To allow such a plea would be to sanction an abuse of the process of law. The other grounds raised by the applicant's counsel, such as enmity and the veracity of witness testimony, are matters of deeper appreciation of evidence, which is the exclusive domain of the trial court and cannot be exhaustively examined at this preliminary stage.

8. For the foregoing reasons, I am in firm view with the reasoning of the learned trial court. The applicant has failed to make out a case for the grant of bail. The specific and serious nature of the allegation, coupled with the fact that the delay in trial is attributable to the applicant's own actions, disentitles him to the concession sought.

9. Consequently, this Bail Application is found to be devoid of merit and is hereby dismissed. It is clarified that the observations made herein are tentative in nature and shall not, in any manner, influence the learned trial court during the final adjudication of the case.

J U D G E

Asghar Altaf/P.A