

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S-295 of 2025

Applicant : Pervez s/o Muhammad Soomar Bakhrani,
Through Mr. Achar Khan Gabol, Advocate

Complainant : Through Mr. Nusrat Hussain Memon, Advocate

The State : Mr. Shafi Muhammad Mahar, DPG

Date of hearing : 28.08.2025
Date of order : 03.09.2025

ORDER

KHALID HUSSAIN SHAHANI, J –Applicant Parvez seeks post-arrest bail in a case bearing crime No. 45/2024 for offenses under Sections 302, 452, 148, 149, 337H(2) & 114 PPC of PS Jhangro, Sukkur. His earlier bail plea was declined by the Court of learned Additional Sessions Judge-III/MCTC-II, Sukkur vide order dated 25.03.2025.

2. The brief facts of the prosecution case, as narrated in the FIR reveal that the sister of the complainant namely Noor Khatoon was married with one Faiz Ali and had four children from this matrimonial union. According to the complainant's version, the brothers of Faiz Ali remained persistently annoyed with the sister of the complainant and used to subject her to maltreatment and harassment on regular basis. Due to this continuous torture and ill-treatment at the hands of her in-laws, Noor Khatoon along with her husband and their children were compelled to shift from their matrimonial home and took refuge at the residence of her brother, the complainant. On the fateful night of 15th June 2024 at about 0245 hours, the complainant party woke up due to unusual noise and commotion in their house. Upon investigation of the disturbance, they observed that the accused persons were present inside their residential premises and made direct firing upon Noor Khatoon and her minor baby Zahida with lethal weapons. After committing this heinous act, the perpetrators fled from the scene while continuing to create harassment and making aerial firing to terrorize the locality. As a result of the gunshot injuries inflicted upon them, both the deceased Noor Khatoon and her innocent baby daughter succumbed to their injuries. Consequent upon; case was registered *inter alia* on above facts.

3. The learned counsel for the applicant has advanced comprehensive arguments in favor of granting bail to applicant. He has submitted with considerable emphasis that both Ali Gohar and the present applicant Parvez

allegedly fired upon the deceased Noor Khatoon, and that there exists a clear and established motive primarily against the co-accused rather than the present applicant. The learned counsel has particularly highlighted the significant delay of nine hours in lodging the FIR, contending that such delay has occurred without any adequate or cogent explanation from the prosecution side. This unexplained delay, according to the defense, provides sufficient opportunity for fabrication and false implication of innocent persons in the case. Furthermore, the learned counsel has drawn the court's attention to serious discrepancies between medical evidence and ocular testimony, arguing that the injuries sustained by the deceased and the eyewitness account of the incident are not corroborating with each other in material particulars. He has specifically pointed out the timing discrepancy whereby the post-mortem receipt shows the time as 04:30 p.m. while the inquest report indicates the timing as 05:30 p.m., creating a temporal impossibility that casts doubt on the entire investigation process. The defense counsel has further submitted that although the dead body was identified by the husband of the deceased Noor Khatoon, surprisingly and inexplicably, he did not come forward to record his statement as a witness before the investigating officer, despite being the most natural and reliable witness to support the prosecution case. The learned counsel has also emphasized the contradiction between ocular evidence and medical findings, arguing that such material contradictions create reasonable doubt about the veracity of the prosecution story. Additionally, he has brought to the court's notice that while Muhammad Sarwar was declared absconder during the investigation, surprisingly the learned Magistrate took cognizance of the case, which raises questions about the consistency in the investigation process. The defense has particularly stressed that mere presence, even if established, cannot be sufficient for refusing bail, especially when the co-accused Adam has already been granted pre-arrest bail by this very Court, establishing a principle of consistency that should benefit the present applicant as well. In support of his arguments, the learned counsel has placed reliance on the landmark judgment of Syed Khalid Hussain Shah v. The State reported as 2014 SCMR 12, wherein the Honorable Supreme Court established comprehensive criteria for determining cases requiring further inquiry under Section 497(2) Cr.P.C. He has also cited the authoritative precedent of *Awal Khan & 07 others v. The State reported as 2017 SCMR 538*, which deals specifically with situations where medical evidence conflicts with ocular testimony and establishes the principle

that such contradictions warrant further investigation at trial rather than prejudicial determination at the bail stage.

4. Conversely, the learned counsel for the complainant has vehemently opposed the bail application on multiple grounds, presenting a comprehensive counter-argument to the defense contentions. He has submitted with considerable force that the accused deliberately remained absconder for a significant period after the commission of the alleged offense, demonstrating a clear consciousness of guilt and intention to evade the process of law. The complainant's counsel has particularly emphasized that the police, acting with malafide intention, initially kept the applicant's name in column-II of the report u/s 173 CR.P.C, suggesting a deliberate attempt to minimize his apparent involvement in the crime. However, as the investigation progressed and evidence emerged, the applicant was eventually arrested on 30th June 2024, and significantly, from his possession a pistol was recovered which proved to be the crime weapon used in the commission of the offense. The complainant's counsel has laid great emphasis on the forensic evidence, specifically the fact that the empty cartridges recovered from the scene of crime matched with the pistol recovered from the possession of the applicant, establishing a direct and irrefutable link between the accused and the commission of the crime. This forensic corroboration, according to the complainant's side, completely destroys any possibility of false implication and establishes beyond reasonable doubt the involvement of the applicant in the heinous offense. In support of these contentions, the learned counsel for the complainant has cited several authoritative judgments including the recent Supreme Court decision in *2024 SCMR 1576*, wherein the apex court refused bail in similar circumstances involving specific nomination and forensic evidence. He has also relied upon the judgment reported as *2023 SCMR 1724*, the *Peshawar High Court decision in 2022 P.Cr.L.J 11*, and the Yearly Law Reporter decisions cited as *2023 YLR 1582 and 2023 YLR 581*, all of which support the prosecution's stance against granting bail in cases involving serious offenses with strong prima facie evidence.

5. The learned Deputy Prosecutor General, representing the State, has supplemented the complainant's arguments with additional legal and factual contentions. He has submitted that any delay in lodging the FIR has been adequately explained by the prosecution through the testimony of witnesses and the circumstances prevailing at the time of the incident. The DPG has particularly emphasized that the applicant has been assigned a specific and

active role in causing injuries on vital parts of the deceased persons, which resulted in their immediate death. He has further submitted that the prosecution witnesses, who are eye-witnesses to the occurrence, have fully supported the prosecution case in their statements recorded under Section 161 of the Criminal Procedure Code. Most significantly, the learned DPG has highlighted the forensic evidence whereby ten empty cartridges were recovered from the spot of occurrence, and out of these, four empties have been scientifically matched with the pistol recovered from the possession of the applicant through the Forensic Science Laboratory report. This forensic corroboration, according to the prosecution, establishes beyond any shadow of doubt the direct involvement of the applicant in the commission of the offense. The DPG has also contended that the case falls squarely within the prohibitory clause of Section 497(1) Cr.P.C., and therefore, the applicant is not entitled to the concession of bail as a matter of right. In support of these arguments, the learned DPG has placed reliance on the time-tested precedent of *Haji Gulu Khan v. Gul Daraz Khan reported as 1995 SCMR 1765*, wherein bail was refused due to strong prima facie evidence, and the Supreme Court decision in *Mumtaz v. The State reported as 2012 SCMR 556*, which established that mere possibility of further inquiry cannot be a ground for granting bail when sufficient evidence exists against the accused.

6. After hearing the learned counsel for all parties extensively and examining the entire record with meticulous care, including the case law cited by both sides, this Court has undertaken a comprehensive analysis of the legal and factual matrix of the case. The examination reveals several critical aspects that require detailed consideration in determining whether the applicant is entitled to the concession of post-arrest bail.

7. Most fundamental and decisive factor in this case relates to the handling and dispatch of forensic evidence, which has been severely compromised due to procedural violations and unexplained delays. The prosecution has primarily relied upon the evidence of the crime weapon and empty cartridges secured from the place of incident, which according to the Forensic Science Laboratory report, matched with the pistol allegedly recovered from the possession of the applicant. However, a careful scrutiny of the record reveals glaring procedural irregularities that have completely destroyed the evidentiary value of this crucial piece of evidence. The empty cartridges were admittedly secured from the place of incident on 15th June 2024, being the date of occurrence, while the same were dispatched to the

Forensic Science Laboratory on 1st July 2024, along with the crime weapon which was purportedly recovered from the applicant on 30th June 2024. This delay of sixteen days in sending the case property along with the crime weapon has fundamentally destroyed the evidentiary value of such piece of evidence and renders the entire forensic corroboration suspect and unreliable.

8. The legal position regarding such delays in dispatch of forensic evidence has been conclusively settled by the Honorable Supreme Court of Pakistan in multiple authoritative pronouncements. In the landmark case of *Ali Sher v. The State* reported as 2008 SCMR 707, the Supreme Court categorically held that when crime empties allegedly found at the place of occurrence are sent to the Forensic Science Laboratory along with the alleged crime weapons after a significant delay, such delay destroys the evidential value of the evidence and the recoveries cannot offer any corroboration to the ocular testimony. The Court observed that such delays provide ample opportunity for manipulation, substitution, and fabrication of evidence, thereby compromising the entire investigation process.

9. The principle established in Ali Sher's case has been consistently followed and reinforced by subsequent Supreme Court decisions. In the case of *Khuda-A-Dad v. the State* reported as 2017 SCMR 701, the Honorable Supreme Court held with remarkable clarity that the alleged recovery of firearm weapon from the possession of the accused during investigation becomes completely inconsequential when the crime empties secured from the place of incident are sent to the Forensic Science Laboratory after the arrest of the accused and recovery of firearm weapon from his possession. The Court categorically observed that dispatching of empties secured from the crime scene after arrest of accused is a practice that has been consistently discarded by the Superior Courts in various authoritative pronouncements, as it opens the door for manipulation and false implication.

10. This legal principle has been further strengthened and reaffirmed by the Honorable Supreme Court in the case of *Mohammad Irshad v. Allah Ditta and others* reported as 2017 SCMR 142, wherein similar observations were recorded regarding the worthlessness of forensic evidence that is compromised due to procedural delays and irregularities. The Court held that when there is a significant gap between the securing of empties from the crime scene and their dispatch to the laboratory, especially when they are sent together with weapons recovered later, the entire forensic evidence loses its credibility and probative value.

11. Additionally, in the case of *Haleem v. the State* reported as 2017 SCMR 709, the Supreme Court again reiterated the same principle, holding that forensic evidence which is tainted by procedural violations and unexplained delays has no value in the eyes of law. The Court emphasized that such evidence, instead of corroborating the prosecution case, actually creates doubt about the entire investigation process and the motives behind such irregular procedures.

12. Therefore, in view of the comprehensive legal position established in these authoritative Supreme Court judgments, the forensic evidence relied upon by the prosecution in the present case, which consists of the matching of empties with the recovered pistol, has absolutely no value in the eyes of law due to the procedural violations and delays that have completely compromised its integrity and reliability.

13. Moving to the application of the further inquiry test as established by superior courts, the legal framework governing bail applications in cases involving serious offenses has been comprehensively laid down by the Supreme Court in the seminal judgment of *Syed Khalid Hussain Shah v. The State* reported as 2014 SCMR 12. In this landmark decision, the Supreme Court established detailed criteria for determining cases that require further inquiry under Section 497(2) of the Criminal Procedure Code. The Court held with remarkable precision that the concept of "reasonable grounds" is an expression which connotes that the grounds must be such as would appeal to a reasonable person for connecting the accused with the crime with which he is charged. The Court particularly emphasized that "grounds" is a word of much higher import than mere "suspicion," and therefore, unless reasonable grounds exist to believe that the accused has committed the offense, bail cannot be refused even in cases falling within the prohibitory clause.

14. The Supreme Court in the 2014 SCMR 12 case further established that when there are conflicts between the ocular account and medical evidence, coupled with scientific impossibilities in the prosecution version, the case automatically warrants further probe at the trial stage rather than prejudicial determination at the bail stage. The Court specifically observed that forensic evidence cannot override fundamental contradictions that require investigation, and that each case, being captive of its own facts and circumstances, must be decided accordingly rather than through rigid application of general principles. This legal framework was further refined and applied in the subsequent Supreme Court decision of *Awal Khan & 07 others v. The State* reported as

2017 SCMR 538, which dealt specifically with situations where medical evidence conflicts with ocular testimony and complainant's stance contains material inconsistencies. The Court in this case established the principle that when such contradictions exist, along with other factors that create doubt about the prosecution version, the case requires further inquiry at the trial stage, and bail becomes a matter of right rather than judicial discretion.

15. Applying these well-established legal principles to the facts of the present case, several material contradictions emerge that collectively render the prosecution case doubtful and warrant further investigation. The first and most glaring contradiction relates to the timing discrepancy in the medical evidence. The post-mortem receipt indicates that the examination was conducted at 04:30 p.m., while the inquest report shows the timing as 05:30 p.m. This one-hour difference in timing creates a temporal impossibility that cannot be explained through ordinary human error, and suggests either gross negligence in the investigation process or deliberate manipulation of records to suit a particular narrative.

16. The second major contradiction lies in the conflict between medical evidence and ocular testimony regarding the nature, location, and extent of injuries sustained by the deceased persons. The First Information Report provides one version of how the injuries were caused and their location on the bodies of the victims, while the medical evidence, including the post-mortem report, presents a different picture that does not corroborate the eyewitness accounts. Such fundamental contradictions between medical findings and ocular testimony have been consistently recognized by superior courts as grounds requiring further inquiry at trial.

17. The third significant factor that creates doubt about the prosecution case is the inexplicable absence of the most natural and reliable witness. The record clearly shows that the dead body of Noor Khatoon was identified by her husband, who was present at the scene of occurrence and would be the most natural person to provide eyewitness testimony about the incident. However, surprisingly and without any explanation, this person did not come forward to record his statement before the investigating officer as a witness to support the prosecution case. This deliberate or unexplained omission of the most crucial witness raises serious questions about the veracity of the prosecution story and suggests that perhaps the actual facts are different from what has been narrated in the First Information Report.

18. The fourth material factor that supports the further inquiry test is the delay of nine hours in lodging the First Information Report without any cogent or believable explanation. While the prosecution claims that this delay has been explained, a careful examination of the record does not reveal any satisfactory justification for such a significant delay, especially when the incident occurred in the early morning hours and the police station was not at a considerable distance from the place of occurrence. Such unexplained delays in reporting serious offenses have been consistently viewed by courts as providing sufficient time for concoction, fabrication, and false implication of innocent persons.

19. The fifth factor that strengthens the case for further inquiry is the principle of consistency with the treatment accorded to co-accused persons. The record clearly establishes that co-accused Adam has already been granted pre-arrest bail by this very Court, which creates a legal presumption that the circumstances of the case are such that they warrant the grant of bail rather than its refusal. When co-accused facing similar charges based on similar evidence have been granted bail, the present applicant cannot be treated differently without distinguishing factors that would justify such discriminatory treatment.

20. The cumulative effect of these material contradictions, procedural violations, and evidential weaknesses brings the present case squarely within the ambit of cases requiring "further inquiry" under Section 497(2) of the Criminal Procedure Code. The legal position is well-established that when such contradictions exist, bail becomes a matter of right rather than judicial discretion, and courts are bound to extend the benefit of doubt in favor of the accused at the bail stage.

21. While it is true that the offense under Section 302 of the Pakistan Penal Code falls within the prohibitory clause of Section 497(1) Cr.P.C., the prohibition is not absolute or inflexible. The Supreme Court has consistently held that even in cases involving serious offenses punishable with death or life imprisonment, bail cannot be refused if there are insufficient reasonable grounds to believe that the accused has committed the offense, or if the case requires further inquiry due to material contradictions and procedural violations.

22. The legal principle established by superior courts is that the prohibitory clause operates only when there are sufficient reasonable grounds connecting the accused with the offense. In the present case, the destruction of forensic evidence through procedural violations, the material contradictions in

medical and ocular testimony, the unexplained delay in FIR registration, and the absence of key witnesses have collectively destroyed the reasonable grounds that would justify the application of the prohibitory clause.

23. After this comprehensive analysis of the legal and factual matrix of the case, considering the authoritative judgments cited by learned counsel for both parties, and keeping in view the well-established principles governing bail applications in serious criminal cases, this Court has reached the firm conclusion that the present case falls within the category of cases requiring further inquiry under Section 497(2) of the Criminal Procedure Code. The prosecution case contains such fundamental contradictions and procedural violations that it would be inappropriate and legally incorrect to make any prejudicial determination about the guilt or innocence of the applicant at this preliminary stage.

24. The forensic evidence, which forms the backbone of the prosecution case, has been completely compromised due to the sixteen-day delay in dispatch to the laboratory and the improper procedure of sending empties and weapon together. The material contradictions between medical and ocular evidence, coupled with the absence of the most natural witness and the unexplained delay in FIR registration, create such reasonable doubt about the prosecution version that further investigation at trial becomes essential rather than optional.

25. In these circumstances, this Court finds that the applicant has successfully made out a case for the concession of post-arrest bail, and the instant bail application is accordingly allowed. The applicant/accused Parvez is hereby admitted to post-arrest bail, subject to his furnishing solvent surety in the sum of Rs.5,00,000/- (Rupees Five Hundred Thousand only) along with a personal recognizance bond in the like amount to the satisfaction of the learned trial court.

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

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