IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No. S-188 of 2025

(Saeed Ahmed and others Vs. The State)

Date	Order with signature of Judge

1. For Orders on office objection.
2. For hearing of bail application.

O R D E R.
05-05-2025.

Mr. Alam Sher Khan Bozdar, Advocate for the applicants
Mr. Mansoor Ahmed Shaikh, Deputy P.G for the State.

Ali Haider 'Ada',J;- Through this bail application, the applicants seekpre-arrest bail in Crime No. 23 of 2025, registered at Police Station Daharki, for offence punishable under Sections 324, 353, 224, 225, 147, 148, 149, 337-H(ii),read with Section 7 of the Anti-Terrorism Act, 1997. The FIR in question was lodged by the complainant, WHC Saeed Ahmed Shar. Prior to this application, the applicants approached before Learned Additional Sessions Judge Daharkifor the same relief, as the same was dismissed vide order dated 27.02.2025.

2. The prosecution case, as narrated in the FIR, is that on 11-02-2025 at about 1420 hours, the complainant, along with other police officials, proceeded to execute warrants of arrest issued by the Hon'ble High Court against accusedIrshad Ahmed Awanin an offence under Section 489-F PPC.Upon reaching the location of the accused and on seeing the police party, accused Irshad Ahmed called his companions for assistance. In response, several co-accused persons/present applicants,Saeed Ahmed, Mumtaz, Aqeel, Shakeel, Waheed, Akhter Ali, Ghulam Fareed, along with three unknown persons and some ladiesarrived armed with lathisand iron rods, that accused Saeed Ahmed struck a police official, Arbelo, with an iron rod, while accused Shakeel assaulted the same official with lathi, causing him injuries to the head and fingers of his

right hand.The accused persons assisted Irshad Ahmed Awan in escaping lawful custody and also resorted to aerial firing, thereby causing terror and harassment in the locality.

3. After completing the required legal formalities, the FIR was registered on the same day, i.e., 11-02-2025, at about 1630 hours.

4. After registration of the FIR, the matter was initially sent to the learned Anti-Terrorism Court, Ghotki. However, upon examining the contents of the FIR and the nature of the alleged offence, the learned Anti-Terrorism Court vide order dated12-02-2025 returned the case, directing that it be filed before the concerned Magistrate having jurisdiction.

5. Learned counsel for the applicants submits that the prosecution story is fabricated and based entirely on the premise of executing non-bailable warrants (NBWs) issued by this Court. However, he draws the attention of this Court to page No. 65 of the case file, where it is evident that this Court had already suspended the NBWs on 10-02-2025, i.e., prior to the date of the alleged incident and registration of the FIR. Therefore, the NBWs were not in the field at the relevant time and the complainant party, with malafide intention and under the influence of person who lodged FIR under section 489-F PPC, manipulated the story in order to falsely implicate the applicants and harass them.He further submits that the injuries allegedly caused to police official Arbelo, as per the medical report, have been opined by the Medical Officer as ShajjahKhaffifahand Ghayr JaifahDamiyah, falling under Sections 337-A(i) and 337-F(i) PPC, which are bailable in nature. It is argued that there is no specific allegation of attempt to commit murder or any injury of a life-threatening nature. Mere invocation ofSection 324 PPC, without any cogent material showing intention or act of

attempt to kill, is not sufficient to disentitle the applicants from the concession of bail.

6. Conversely, the learned Deputy Prosecutor General has opposed the bail application and submits that the alleged offence falls within the prohibitory clause of Section 497 Cr.P.C.He contends that the complainant party, being members of the police force, were performing their lawful duty at the relevant time and the applicants not only obstructed them but also committed a physical assault, thereby frustrating the execution of legal process, which disentitle the applicants from the concession of bail.

7. Heard the arguments advanced by the learned counsel for the applicants, the learned Deputy Prosecutor General and perused the material available on record with due care and caution.

8. From the material available on record, a crucial aspect requiring determination is whether the action undertaken by the complainant party, i.e., the attempted execution of non-bailable warrant was legally justified and in force at the relevant time. Upon careful perusal, the answer appears in the negative; as this Court had already suspended the NBWs issued against one of the applicants vide order dated 10-02-2025, a day prior to the alleged incident. Therefore, there existedno legal necessity for the complainant party to approach the residence of the applicants for the purpose of execution, particularly when the warrants had ceased to remain in the field.

9. In pursuance of Section 225 PPC, for sake of reference the same is reproduced as under:

25. ***Resistance or obstruction to lawful apprehension of another person:***

Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescue or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with imprisonment for life, or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

or, if the person to be apprehended or, rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued or attempted to be rescued, is liable under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to imprisonment for life or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

10. Further elaborate in case of ***Shah Muhammad alias Shah Khan Vs The State, PLD 2011 Quetta 57,***wherein it has been held that:

7. In order to bring the case within the purview of section 225, P.P.C, the custody of. a person must be lawful, through a warrant of arrest, issued by a competent Court or the person heaving custody of an accused, must have the authority to lawfully detain him/her. Thus, to attract section 225, P.P.C, a lawful apprehension is a condition precedent.

8. In the present case, it is alleged that the main accused was arrested by Duki police officials, who handed over him to the police officials of Loralai. It is a fact that none of the official of Duki Police Station did appear as a witness to prove the contention of the prosecution. No evidence has been produced to prove the fact that the prosecution has adopted a lawful means to arrest or to detain Ahmed Din in custody, therefore, the detention of the alleged escaped prisoner with police officials had not been proved to be lawful. Thus, rescue of Ahmed Din, if believes to be true, even then, no offence under section 225, P.P.C. is made out. Reliance has been placed on case title Public Prosecutor v. Annadham Annamalai and others, reported in AIR 1954 MADRAS 321 (Vol. 41, C.N.133), relevant portion of the judgment at page-324 is reproduced herein below:

Para No.13... *Therefore, the apprehension of the person in question Vasudeva was not lawful and once the apprehension or detention is not lawful, it is well settled law that his own escaping as well as the rescuing of such a person by others is no offence. The person from whose custody the rescue is effected or escape made must have authority to lawfully detain the person rescued. Otherwise no offence is committed in effecting the rescue.*

Para No.15... *This embodies only the sound rule embodied in section 80, Cr. P. C. viz, that the Police Officer shall inform the warrantee the substance thereof and if so required has got to show the warrant. This court has laid down in 'AIR 1924 Mad. 555(A)', that a person about to be arrested is entitled to show under what power the constable is arresting him and if he specifies a certain power which the person knows the constable has not got, he is entitled to object to such arrest and escape from custody, such custody not being lawful one. See also 'Ramjit v. Emperor', AIR 1938 All, 120 (V). Thus, where an inspector of police catches hold of the wrist of the accused without informing him for what offence he was being arrested accused wrenching himself free is not guilty of any offence under the Indian Penal Code:-- 'Moneshwar Bux v. Emperor', AIR 1939 Oudh 81 (W).*

Para No. (16)... *There is a long line of decisions that resistance to the execution of an unlawful order, or unlawful arrest or defective warrant making out it is 'ex facie' illegal is no offence. Where the Sub-Inspector asked the constable to bring the accused to thana by force and there was a scuffle, held as there was no direction for arrest accused was not guilty of an offence under Ss. 224, 225, 353, I.P.C. -'Gulabi Mahto v. Emperor', AIR 1940 Pat. 361(x). Under the Madras Gaming Act arrest of accused in a shop in the absence of proof that it was a common gaming house led to obstruction to arrest and it was held to be no offence-'Kandasami Thevan v. Emperor' 1934 Mad WN 616(Y). Where warrants have not been duly signed or sealed or they are sought to be executed beyond duly authorized and authorizeable persons obstruction to execution of such warrants is not unlawful provided the force used is the minimum necessary:- Jagnannath v. Emperor', AIR 1932 All 227 (Z);-Fattu v. Emperor, AIR 1932 All 692 (ZI); --'Subbaramiah v. Emperor', AIR 1934 Mad 206 (Z2);--In re Bhullikhan, AIR 1938 Nag. 45 (Z3)--- Bansropan Singh v. Emperor', AIR 1973 Pat. 603 (Z4).*

Para No. (17). *Therefore, the acquittals made by the learned Stationary Sub-Magistrate are correct and these appeals are dismissed.*

11. On such aspect, the matter of applicants falls under the further enquiry asthe principal laid down by the Honourable Supreme Court in the case of ***Saeed Ahmed and another vs. The State (PLD 2024 SC 1241),*** it has been held that:

> *On the basis of tentative assessment of the material so far available on record the case against the petitioners falls within the ambit of further enquiry as well. In the cases of Salman Mustaq vs The State, Ahtisham Ali vs The State, Fahad Hussain vs The State,Gulshan Ali Solangi vs The State, Muhammad Sadiq vs The State , Rana Muhammad Arshad vs Muhammad Rafique , apart from the grounds of malafide , ulterior motive and abuse of process of law , the accused were granted pre-arrest bail on the ground of further enquiry on the basis of tentative assessment of the material available on record.*

12. It is also worth noting that all offences, as alleged attributed to the applicants are bailable in nature, except for the offence under Section 324 PPC. However, the applicability of Section 324 PPC requires clear and convincing evidence of *mens rea*, which, in the present case, appears to be lacking. There is no specific allegation that applicants caused any serious injury or use of weapons in a manner that would indicate an intent to commit murder. As such, the mere incorporation of Section 324 PPC, without supporting material, does not by itself disentitle the applicants from the concession of bail.

13. It is also a firmly established legal principlethat at the time of deciding bail applications, the matter must be examined within the broader constitutional framework, with due emphasis on the fundamental rights of the individual, particularly the rights to liberty, dignity, due process, and a fair trial. Themalafide, being a state of mind, may not always be established through direct evidence. However, it can reasonably be inferred from the surrounding circumstances of the case, such as the absence of incriminating material against the accused or the lack of any lawful orpurpose behind the intended arrest. Reliance is placed upon the case of ***ShahzadaQaiserArfat alias Qaiser v. The State and another (PLD 2021 SC 708)***

14. It is well settled principle of law that once Court reaches at the conclusion that in case of dismissal of pre-arrest bail the accused would become entitle for post arrest bail , then it would be a mere futile exercise to send the accused in

prison. Reliance is placed upon the unreported judgment of the Honourable Supreme Court in ***Criminal Petition for Leave to Appeal No. 225-L/2025, titled Mudassar Khursheed vs. The State and another, decided on 08.04.2025.*** Further reliance in this regard may also be placed on cases tilted *Muhammad Ramzan vs Zafar Ullah and another* 1986 SCMR 1380 and *Khair Muhammad and another Vs The State through PG Punjab and another* 2021 SCMR 130.

15. In view of the foregoing reasons, the applicants have made out a case for bail. Accordingly, the ad interim bail granted to the applicants in the above-mentioned case vide order dated 06-03-2025 is hereby confirmed on the same terms and conditions.

16. It is further observed that the findings made herein above are tentative in nature and should not be construed as influencing or prejudicing the trial of the applicant.

JUDGE

Ihsan/PS.