

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Bail Application No.S-455 of 2025

Applicant : Zafar Hussain (present on interim pre-arrest bail) through Mr. Nasrullah Unar, Advocate.

Respondent : The State through Ms. Rameshan Oad, Deputy Prosecutor General Sindh along with ASI Ghulam Shabbir on behalf of SHO PS Tando Jam.

Complainant : Arshad through Mr. Saad Salman Ghani advocate who filed his Vakalatnama today, taken on record.

Date of hearing : 02.06.2025.

Date of Order : 02.06.2025.

ORDER.

Amjad Ali Sahito, J:- Through instant bail application, the applicant/accused Zafar Hussain seeks his pre-arrest bail in Crime No.230 of 2024, for offence under sections 302, 34 P.P.C, registered at P.S. Tando Jam, after his bail plea was declined by the learned Model Criminal Trial Court/1st Additional Sessions Judge, Hyderabad vide his order dated 14.04.2025.

2. The details and particulars of the F.I.R. are already available in the bail application and F.I.R., same could be gathered from the copy of F.I.R. attached with such application, hence needs not to reproduce the same hereunder.

3. Learned counsel for the applicant/accused argues that the applicant has been falsely implicated in the case. He argues that, according to the FIR, indiscriminate firing took place during a dance program at a wedding, yet only the applicant's alleged shot struck both victims, a highly doubtful scenario. He argues that one victim merely sustained an injury, did not obtain a medical letter, nor lodge an FIR, indicating the FIR was lodged after consultation which is fabricated. The complainant, a permanent resident of Hyderabad, named the applicant with full particulars despite the alleged incident occurring in a rural area. The incident took place on 29.11.2024 at about 2:30 AM, but the FIR was lodged on 01.12.2024 at 6:00 PM i.e. a delay of nearly three days with no plausible explanation, despite the police station being only three kilometers away. No N.C., complaint or medical treatment was sought

prior to the FIR, which was lodged after funeral ceremonies. The counsel argues that the applicant has been booked with *mala fide* intention in collusion with others; particularly, co-accused Jalal and Jamaluddin have already been granted bail and as the applicant's role is similar, the rule of consistency applies. He, therefore, prays for confirmation of interim pre-arrest bail.

4. On the other hand learned D.P.G. Sindh duly supported by the learned counsel for the complainant vehemently opposed the confirmation of bail in favour of the applicant. Learned counsel for complainant adds that the applicant after grant of interim pre-arrest bail did not join the investigation before Investigating Officer, therefore, the weapon from which the deceased was shot dead has not been recovered. He further adds that the applicant is nominated in the FIR with specific role, as such, there is no *mala fide* intention to robe the applicant falsely as he is fully connected in the commission of offence.

5. Heard and perused the record.

6. The record reflects that the applicant/accused is specifically nominated in the FIR with the allegation that on 29.11.2024, during a dance program held at village Naseer Khan Pussio, he, while armed with a repeater, forcibly tried to compel two dancers, Mehendi (deceased) and Aleeza, to perform at gunpoint. Upon their refusal, the applicant, in a fit of rage, allegedly opened straight fire, causing fatal firearm injuries to Mst. Mehendi on her abdomen and right arm. This act, committed in a public gathering meant to offer joy and celebration, where a female performer was shot dead merely for asserting her will, reflects a grave and intolerable offence against personal dignity and public order. The name of applicant finds specific place in the FIR and the ocular account is duly corroborated by medical evidence. Statements of eyewitnesses recorded under section 161 Cr.P.C further support the prosecution's version. It is settled law that for grant of pre-arrest bail, mere assertion of false implication is not sufficient; the accused must demonstrate *mala fide* or ulterior motive on part of the complainant or police. However, in this case, the applicant has failed to establish any such *mala fide* or animosity, neither any prior enmity nor motive has been alleged. Further, despite being granted interim protection, the applicant did not cooperate with the investigation,

resulting in non-recovery of the weapon used in the offence, reflecting a lack of *bona fide* on his part. The principle of consistency invoked by the applicant also does not apply as the role attributed to him is distinguishable from that of the co-accused who have been granted bail, particularly due to his alleged direct and active involvement in the fatal shooting.

7. In view of the *prima facie* material connecting the applicant to the commission of the offence, absence of *mala fide* and the seriousness of the allegations, I am of the considered opinion that the applicant does not deserve the extraordinary concession of pre-arrest bail. The application is, therefore, dismissed and the interim pre-arrest bail granted to the applicant earlier is recalled. ASI Ghulam Shabbir is present before the Court and requests that the custody of the applicant/accused be handed over to him. Accordingly, the custody of the applicant/accused is hereby handed over to ASI Ghulam Shabbir for further proceedings in accordance with law.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of the applicant on merits.

JUDGE