

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Crl. Bail Application No.S-698 of 2025

Applicants: 1) Waseem Khan son of Allah Daad Jamali and 2) Mukhtiar Ali son of Ameer Bux Jamali through Mr. Toseef Ahmed Chandio, Advocate.

Complainant: Kashif Ali son of Ghulam Nabi Unar through Mr. Zain-ul-Abdin Sahito, Advocate

For the State: Mr. Ghulam Murtaza Mallah, Assistant P.G.

Date of hearing: 04-09-2025

Date of Order: 04-09-2025

ORDER

Jan Ali Junejo, J. – Through the instant application under Section 498 Cr.P.C., the applicants seek their pre-arrest bail in Crime No.65 of 2025 registered at Police Station Khadhar under Sections 324/337-H(ii)/506-2/504/447/148/149 P.P.C. Their earlier attempt to secure such concession before the learned Additional Sessions Judge-VI, Shaheed Benazirabad, was unsuccessful. Vide order dated 24.06.2025, the learned Court declined confirmation of interim bail, holding that the applicants had been specifically assigned the role of holding the injured Suhail Ahmed to facilitate co-accused Muhammad Khan in causing firearm injury, and that recovery of weapon as well as arrest of absconding co-accused were still pending. The said order resulted in dismissal of their bail plea, compelling the applicants to approach this Court for relief.

2. Complainant Kashif Ali lodged FIR on 16.05.2025 at 2000 hours, alleging that while present with his brother Suhail Ahmed and cousins at their agricultural land, they were attacked by the accused party including applicants Waseem Khan and Mukhtiar Ali. It is alleged that both applicants held the

injured Suhail Ahmed from his arms, thereby enabling co-accused Muhammad Khan to fire upon him with a pistol, hitting him on the abdomen. The complainant alleged further threats, aerial firing, and departure of the accused from the spot.

3. Learned counsel for the applicants contended that the case is false, stemming from an underlying civil/financial dispute regarding a car file and agricultural land. He highlighted:

- Delay of nearly 20 hours in lodging FIR, allowing deliberation;
- Injuries sustained by applicant Waseem and his companion Ali Murad, which were deliberately concealed in FIR;
- Direct act of firing attributed to co-accused Muhammad Khan, not the present applicants;
- The allegations of “holding the injured” being vague and general, thus attracting further inquiry;
- All prosecution witnesses being related/interested;
- Misapplication of Section 324 PPC against present applicants.

It was further argued that applicants have remained on interim bail since 19.05.2025 without misuse of concession, absconsion, or tampering with evidence.

4. Conversely, learned A.P.G and learned counsel for complainant have opposed the bail by urging that: (a) The applicants are specifically nominated with an active role; (b) The injured remains under treatment; (c) The offences fall within prohibitory clause, disentitling applicants to extraordinary relief. Lastly, the learned APG prayed for dismissal of bail plea.

5. I have carefully considered the submissions of the learned counsel for the parties and examined the available record with due circumspection, as permissible at the bail stage, and with their able assistance. It is an admitted fact that the act of firing is attributed to co-accused Muhammad Khan,

whereas the present applicants are only alleged to have held the injured. Whether such act constitutes participation through common intention is a matter that can only be determined on the basis of evidence at trial. At this preliminary stage, the allegation is not free from doubt and squarely falls within the ambit of “*further inquiry*” as envisaged under Section 497(2), Cr.P.C. It is also admitted that applicant Waseem and his companion sustained injuries in the same occurrence, which the prosecution has failed to explain. Such omission materially affects the credibility of the prosecution case and raises doubt about the truthfulness of its version. Furthermore, the FIR was lodged after an unexplained delay. Although, the delay in itself is not always fatal, the law recognizes that such lapse provides sufficient time for deliberation and consultation, thereby diminishing the spontaneity and authenticity of the incident as narrated. As regards Section 324, PPC, the prosecution must prima facie establish the requisite intention or knowledge coupled with an overt act. In the present case, the role of firing is not attributed to the applicants, whose alleged role is merely ancillary. In this context, reference may usefully be made to the principle enunciated by the Honourable Supreme Court of Pakistan in Case of ***Jamaluddin and another v. The State (2023 SCMR 1243)***, wherein it was held that: “The complainant and the injured PW received injuries on the non-vital parts of the body and the petitioners did not repeat the fire despite having ample opportunity to do so. In this view of the matter, the question whether section 324, P.P.C. would be applicable in the case or not would be determined by the learned Trial Court after recording of evidence. As far as the question which requires the attention of this Court is that petitioner Jamaluddin has been granted ad interim pre-arrest bail by this Court whereas the other petitioner Rabail has filed petition claiming post-arrest bail. As far as the principle enunciated by this Court regarding the consideration for grant of pre-arrest bail and post-arrest bail are entirely on different footings is concerned, we have noticed that in this case both the

petitioners are ascribed the same role. For the sake of arguments if it is assumed that the petitioner enjoying ad interim pre-arrest bail is declined the relief on the ground that the considerations for pre-arrest bail are different and the other is granted post-arrest bail on merits, then the same would be only limited upto the arrest of the petitioner Jamaluddin because of the reason that soon after his arrest he would be entitled for the concession of post-arrest bail on the plea of consistency". Whether common intention under Section 34, PPC, can be inferred against the applicants is a matter to be determined on the basis of evidence at trial. The alleged weapon is attributed to absconding co-accused Muhammad Khan and not to the present applicants; hence, denial of bail to them merely on this ground would amount to pre-trial punishment. Material on record further reflects the existence of a civil and monetary dispute between the parties, unexplained injuries sustained by the accused side, cross versions of the incident, and an FIR lodged after considerable delay. These circumstances, taken together, prima facie suggest mala fide and ulterior motives in the prosecution's case. The settled principle of law is that pre-arrest bail, though an extraordinary relief, may be granted where mala fide, ulterior motive, or the possibility of false implication is apparent. Except for Section 324, PPC, the remaining offences do not fall within the prohibitory clause of Section 497, Cr.P.C. Even with respect to Section 324, PPC, the guiding principle laid down in *Tariq Bashir v. The State (PLD 1995 SC 34)* that "*bail is a rule and refusal an exception*" comes into play where the case calls for further inquiry. It is also significant that the applicants have remained on interim bail for several months without any allegation of misuse of concession, absconsion, or interference with the prosecution witnesses. Their conduct thus reinforces their entitlement to the confirmation of pre-arrest bail.

7. For the foregoing reasons, I am of the considered view that the applicants have succeeded in making out a case of further inquiry coupled

with apparent mala fide in their implication. Accordingly, the interim pre-arrest bail already granted to them is hereby **confirmed** on the same terms and conditions. Needless to observe that the observations made herein are tentative in nature and shall not prejudice the trial Court in deciding the case on merits. These are the detailed reasons of the short order announced on 04.09.2025.

JUDGE

Ahmed/Pa,