

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. S-626 of 2025

Applicant : Muhammad Ismail s/o Abdul Rasheed, Brohi
Through Mr. Faiz Muhammad Brohi, Advocate

Complainant : Khalid Hussain s/o Haji Jumma, Brohi
Through Mr. Abdul Sattar Luhrani, Advocate

The State : Through Mr. Muhammad Raza Katohar, DPG

Date of hearing : 23.10.2025
Date of order : 06.11.2025

ORDER

KHALID HUSSAIN SHAHANI, J.— Applicant Mohammad Ismail, seeks post arrest bail in a case bearing crime No.40/2024, for offences under Sections 302, 504, 114, 337-H(ii), and 34 PPC, registered at Police Station Bhiria Road, District Naushahro Feroze.

2. As per the FIR lodged on 25.05.2024 at Police Station Bhiria Road by the complainant Khalid Hussain Brohi, the prosecuting case is that the complainant's family and the applicant's family have been engaged in a prolonged dispute over agricultural land situated near Village Muhammad Ismail Brohi, Deh Chanhi Manomal, Taluka Bhiria. The complainant's father, Haji Juma Brohi, was the registered owner of the disputed agricultural land. The applicant's family allegedly raised repeated objections contending that a portion of their land had been illegally occupied by the complainant's party. Despite government measurements confirming that no such encroachment had occurred, the dispute continued to simmer between the parties, giving rise to considerable animosity. On 23.05.2024, at about 11:00 am, the complainant party, including Khalid Hussain (the complainant), his father Haji Juma Brohi (deceased), his cousin Sajan, and his uncle Noor Bux, were present in their agricultural fields to cultivate crops. The deceased was standing at some distance from the others near a water pump under the shade of a tree. According to the prosecution version, the applicant Mohammad Ismail, along with three

other co-accused namely Siddique (armed with a pistol), Akbar (unarmed) and Aijaz (unarmed), all residents of Village Muhammad Ismail Brohi, ran towards the complainant party, using abusive language. Upon reaching the spot, the applicant allegedly raised *lalkara* (criminal intimidation) against the deceased, stating in his native language that "you have occupied our land and today we will not spare you and will kill you." The applicant allegedly then instigated his co-accused not to spare the deceased and to kill him. Following this Lalkara, co-accused Akbar and Aijaz are alleged to have caught hold of the deceased from his arms, while co-accused Siddique (armed with a pistol) made a straight fire shot at the deceased. The firearms injuries were sustained on the left side of the face, with the bullet passing through and causing fatal injuries. Thereafter, the accused made aerial firing to create harassment and fled the scene. The deceased was rushed to Government Hospital Bhiria but expired before arrival. The postmortem examination confirmed the fatal nature of the gunshot injuries.

3. Mr. Faiz Muhammad Brohi, the learned counsel for the applicant, submitted the grounds in support of the bail application that applicant is innocent and has been falsely implicated in the case due to the pre-existing land dispute between the two families, which is itself an admission in the FIR; there is an unexplained delay of two days in lodging the FIR. The FIR was lodged on 25.05.2024 at 21:00 hours, while the incident occurred on 23.05.2024 at about 11:00 am. Such inordinate delay is suspicious and casts doubt on the credibility of the prosecution case; the fact that there exists a pre-existing land dispute between the parties creates a motive for false implication. The complainant has admitted this dispute in the FIR itself, establishing clear enmity between the parties, which provides an opportunity for the complainant to frame innocent persons; no incriminating material whatsoever has been recovered from the possession of the applicant at the time of his arrest. The memo of arrest clearly reflects that nothing was recovered from the applicant's possession, suggesting

that he had no involvement in the alleged crime; the place of incident is a populated area, yet no independent witnesses have been cited by the prosecution. The complainant relies solely on his family members as witnesses, which raises serious questions about the reliability and veracity of their testimony; the applicant has been charged with making Lalkara (raising criminal intimidation/threats), which requires further inquiry to determine whether such threats were commanding in nature or merely proverbial utterances made in the heat of the moment during a heated dispute; the question of common intention of the applicant with co-accused persons requires further investigation and examination of evidence during trial; the mere presence at the scene or making threats does not automatically establish common intention without specific overt acts directly attributable to the applicant.

4. Mr. Abdul Sattar Luhrani, learned counsel for Complainant and Mr. Muhammad Raza Katohar, Deputy Prosecutor General for the State, while opposing the bail application, advanced submissions that the applicant stands accused of committing murder, which is an offence punishable with death or life imprisonment under Section 302 PPC. Murder is a heinous offence falling within the prohibitory clause of Section 497(1) Cr.P.C, and bail should not be granted except in exceptional circumstances; the applicant is not merely a peripheral actor but the principal accused who orchestrated and instigated the commission of the offence. The applicant was armed with a pistol and, on his instigation, co-accused Akbar and Aijaz caught hold of the deceased while co-accused Siddique fired the fatal shot; all the accused persons came to the spot as members of an unlawful assembly with a common object. The applicant's role in making *lalkara* (raising threats) and instigating others clearly demonstrates the existence of common intention and common object of committing murder; the delay in lodging the FIR has been adequately explained. The complainant party immediately informed the police, arranged for the

conveyance of the injured/deceased to hospital, completed legal formalities, and conducted postmortem examinations before lodging the FIR. The delay is therefore reasonable and well-explained; the prosecution witnesses have fully implicated the applicant in their statements recorded under Section 161 Cr.P.C. The investigating officer has also recovered a pistol from the applicant's possession, further linking him to the commission of the offence; the trial has been delayed due to adjournment applications filed by the defence counsel. Charge was framed on 14.10.2024, and prosecution witnesses have been in attendance, but the trial has not progressed due to defence tactics, suggesting the applicant does not wish to proceed with the case. Granting bail to the applicant would send a dangerous message that individuals can commit murder with impunity, thereby endangering public safety and the cause of justice.

5. Having carefully considered the arguments advanced by the learned counsel for all parties and having perused the case record in detail, the following legal and factual issues require consideration:

6. Section 497(1) of the Cr.P.C provides that when any person accused of a non-bailable offence is arrested or detained, he may be released on bail, *provided* that he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years. The provision contains several qualifications:

- First Proviso: Provides exceptions for persons under sixteen years, women, sick or infirm persons.
- Second Proviso: Mandates notice to the prosecution before release.
- Third Proviso: Directs mandatory release on bail if the accused has been in detention for more than one year (if accused of offence not punishable with death) or more than two years (if accused of offence punishable with death) and trial has not concluded, except where delay is occasioned by the accused himself.

7. It is imperative to note that even in heinous offences, the law does not impose an absolute prohibition on bail. The statutory language employs the expression "reasonable grounds for believing" that the accused has been guilty. This requires the Court to undertake a careful evaluation of the material on record to determine whether there exists a prima facie or reasonable case against the accused, or whether the case falls within the domain of "further inquiry" as contemplated under Section 497(2) Cr.P.C. The superior judiciary of Pakistan has consistently held that: (a) Bail in heinous offences is not an absolute right but a concession to be granted cautiously; (b) However, bail cannot be refused merely because the offence is serious in nature; (c) The Court must examine whether there are "reasonable grounds for believing" that the accused committed the offence; (d) If the prosecution case is weak, doubtful, or requires further inquiry, bail should be granted rather than confining an innocent person; (e) Liberty is a precious right which must be resolved in favour of the accused, and denial thereof requires extreme compelling reasons.

8. The Supreme Court of Pakistan in the case of *Muhammad Shakeel v. The State* (PLD 2014 S.C. 458) has laid down that detailed reproduction of facts is unnecessary when deciding bail applications, but the relevant facts pertaining to the accused are crucial for determination. In *Chairman NAB v. Nisar Ahmed Pathan and others* (PLD 2022 S.C. 475), the Supreme Court held that "granting bail in doubtful cases is preferable to wrongful imprisonment, as no satisfactory reparation can be offered to an innocent person on his acquittal for unjustified imprisonment." The term "*Lalkara*" (also spelled as *Hakals* in some regions) is widely recognized in criminal jurisprudence as indicating a threat or warning issued verbally. While such threats are undoubtedly reprehensible and constitute criminal intimidation under Section 506 PPC, the Supreme Court and High Courts have consistently distinguished between:

- (a) *Commanding Lalkara: A clear, direct, and commanding instruction or incitement to commit a specific criminal act;*
- (b) *Proverbial Lalkara: A mere threat or warning uttered in the heat of moment or during heated disputes, which does not necessarily translate into a specific instruction to commit a criminal act.*

9. In the case reported as 2022 S.C.M.R 186, the Supreme Court examined a similar situation and held:

"The question which require determination is whether the 'Lalkara' raised by the petitioner was commanding in nature or that was mere a proverbial 'Lalkara'. During the course of proceedings before us, it has been vehemently argued by the learned counsel for the petitioner... Keeping in view the arguments of the learned counsel and law on the subject, as the proclamation was issued much prior to the lodging of the crime report; question qua its being a commanding 'Lalkara' or otherwise it seems to be determined by the learned trial court after recording of evidence."

10. Section 34 imposes joint liability when a criminal act is committed by several persons in furtherance of a common intention. However, the key requirement is that:

- (a) *The criminal act must be committed by one of the accused in furtherance of the common intention of all;*
- (b) *Common intention is not equivalent to mere presence at the scene;*
- (c) *Common intention can be inferred from circumstances and the conduct of the parties;*
- (d) *However, at the stage of bail consideration, mere suspicion or inference of common intention is insufficient; rather, there must be tangible material suggesting the existence of such common intention.*

11. Section 149 (Common Object): This section creates vicarious liability for members of an unlawful assembly. It requires:

- (a) *Membership of an unlawful assembly;*
- (b) *A common object of such assembly;*
- (c) *Commission of an offence in prosecution of the common object or an offence known to be likely to be committed in prosecution of that object.*

Application to the Present Case:

The prosecution case relies significantly on the allegation that the applicant:

- (i) *Made Lalkara against the deceased;*

- (ii) *Instigated co-accused to commit murder;*
- (iii) *Was part of an unlawful assembly with common intention/object to commit murder.*

12. However, the prosecution evidence on record, as presently available, merely suggests that the applicant was at the scene of incident; the applicant made certain statements (*Lalkara*); the applicant may have made a general incitement. The critical question remains: Did the applicant specifically incite the commission of murder, or did he merely raise threats in the heat of moment during a pre-existing dispute? This question cannot be determined at the bail stage and requires further inquiry during trial through examination of evidence in detail.

13. While the learned DPG has submitted that the delay is well-explained, the Court must cautiously examine whether such explanation is reasonable. The prosecution has attributed the delay to:

- (a) *Arranging for conveyance of the deceased to hospital;*
- (b) *Police completing legal formalities;*
- (c) *Conducting postmortem;*
- (d) *Conducting funeral ceremony and burial rites.*

However, it is pertinent to note that the FIR was lodged after a gap of approximately 34 hours from the incident. While funeral and burial rites are important cultural and religious obligations, the complainant could have lodged the FIR before the funeral ceremony was completed. A two-day delay, though explainable, does introduce an element of doubt regarding the sequence of events and the reliability of details provided in the FIR, particularly when the complainant's narrative relies on memory after such a considerable lapse of time.

14. At the bail stage, the Court is required to determine whether the prosecution evidence suggests "reasonable grounds for believing" that the accused is guilty, or whether the case is one requiring "further inquiry." The evidence on record presently consists of statements under Section 161 Cr.P.C: The prosecution witnesses have provided statements recorded by the investigating officer. However, these statements are not yet subjected to cross-examination and may contain inconsistencies, omissions, or exaggerations. The postmortem report confirms that the deceased sustained gunshot injuries on the

face with fatal consequences. However, the postmortem does not establish who specifically fired the shot. The investigating officer has reported recovery of a pistol from the applicant. However, mere recovery of a weapon does not establish its use in the commission of the offence, particularly when multiple accused persons have access to weapons. Critically, there is no eyewitness evidence establishing that the applicant himself fired the fatal shot. The prosecution case appears to rest on the theory of common intention and common object, based on the applicant's Lalkara and alleged instigation. A careful reading of the case record reveals that the applicant's case notes that on 23.05.2024 at about 11:00 am, the applicant was at RHC Bhiria as an outdoor patient (OPD slip No. 2257). This apparent contradiction requires clarification and further investigation.

15. The Court finds that the factual matrix clearly establishes that there exists a genuine and long-standing land dispute between the families; Both parties have approached civil and criminal authorities regarding this dispute; The applicant's family has filed a Direct Complaint alleging that the complainant's party attacked them first on 23.05.2024; There are counter-allegations of wrongful confinement and lodging of false FIR by police at the instigation of the complainant; The incident occurred in the context of this hostile environment created by the land dispute.

16. Where a land dispute forms the backdrop of allegations, courts have consistently held that the possibility of false implication increases substantially; the testimony of complainant's family members requires careful scrutiny due to inherent bias; further investigation and trial is essential to ascertain the truth. The Supreme Court judgment in the case where land disputes led to murder allegations noted that such cases require extreme caution before refusing bail, as they frequently involve cross-implication and false allegations arising from enmity.

17. The statutory language of Section 497(2) Cr.P.C mandates that:

The Court shall, except where it is of the opinion that the delay in trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf, direct that any person shall be released on bail who, being accused of any offence punishable with death, has been detained for such offence for a continuous period exceeding two years and whose trial for such offence has not concluded.

18. While the detention period here has not exceeded two years, the principle underlying this provision that bail should be granted when trial cannot be speedily concluded applies here as well. The broader principle is that when a case requires further inquiry and is not capable of ready determination based on the evidence presently available, bail should be granted. Examining the case applying the "further inquiry" test:

- (a) *Presence vs. Direct Participation: The applicant's presence at the scene does not automatically establish his participation in the criminal act. Further inquiry is required through cross-examination of witnesses and presentation of defence evidence.*
- (b) *Lalkara vs. Incitement: The nature and commanding character of the Lalkara remains unclear. Further inquiry through detailed examination of evidence is necessary.*
- (c) *Common Intention - Complex Issue: Establishing common intention is a nuanced exercise requiring examination of conduct, statements, movements, and prior understanding between parties. This is pre-eminently a matter for detailed inquiry during trial.*
- (d) *Weapon Recovery and Use: The recovery of weapon does not establish its use in the commission of the offence or the applicant's role. Further investigation and evidence is required.*
- (e) *Counter-Allegations: The applicant's party has counter-allegations against the complainant, including allegations of wrongful confinement by police. These require investigation and consideration.*

19. In light of the above, this Court is of the clear opinion that the present case is one requiring "further inquiry" within the meaning of Section 497(2) Cr.P.C. The prosecution has not presented a sufficiently clear and conclusive case at the bail stage to justify continued detention of the applicant.

20. Accordingly, the Criminal Bail Application is allowed and applicant is admitted to post-arrest bail, subject to furnish solvent surety in the sum of Rs.500000/ (Rupees Five Hundred Thousand) and PR bond in the like amount to the satisfaction of learned trial Court. The observations made herein are tentative in nature, relate solely to the disposal of this bail application, and shall not prejudice the rights of any party at the stage of trial or any subsequent proceedings. All questions regarding the guilt or innocence of the applicant and the applicant's involvement in the alleged offence shall be determined only after full examination of evidence during trial.

J U D G E