

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Misc. Appln. No.598 of 2025

Date	Order with Signature of Judge
------	-------------------------------

For hearing of main case.

09.09.2025

Mr. Nazirullah Mehsood, advocate a/w applicant
Mr. Riaz Ali Samtio, advocate a/w respondent No.2-HC Mumtaz Ali
Mr. Zahoor Shah, DPG a/w SIP Abdul Majeed Leghari I.O. of FIR
No.174/2025 PS Sohrab Goth u/s 302 PPC

—————

According to the Counsel for the accused/respondent no.2, HC-Mumtaz Ali s/o Muhammad Bux, on 28.03.2025, the accused/respondent no.2, was allegedly involved in an incident when he, along with his colleagues, was apparently pursuing street criminals. During the chase, the accused/HC-Mumtaz Ali, fired a gun, whose bullet hit the deceased Umeedullah, who was present at the milk shop. Umeedullah was taken to the hospital, but it was too late. Accused respondent no.2 Counsel argues that this was a case of an alleged blind firing (Qatl-i-Khata), a form of unintentional killing under Section 319 PPC, as opposed to an offence of Section 302 PPC (Qatl-e-Amad).

On the same date as the occurrence of the alleged crime, i.e. 28.03.2025, Arshadullah, the cousin of the deceased, registered an FIR No.174/2025 under Section 302 PPC (Qatl-e-Amad), which was lodged in P.S. Sohrab Goth, Malir, against the accused HC-Mumtaz Ali and others. While investigation of the said FIR was underway by the I.O., on 03.06.2025, HC-Mumtaz Ali approached the Sessions Court and obtained bail under Section 319 PPC from the said Sessions Court, subject to furnishing a solvent surety in the sum of Rupees Four Million only (Rs.4,000,000/-) with P.R. bond in the like amount.

The applicant/complainant is aggrieved that the Sessions Court, by its impugned Order dated 03.06.2025, granted the accused, HC-Mumtaz Ali, the concession of bail under Section 319 PPC, which is a

bailable offence and not under Section 320 PPC, which is non-bailable, without even the Magistrate accepting the Interim Challan. Counsel for the complainant/applicant contends that, at the material time, the interim challan was yet to be accepted by the Magistrate's Court. He further argues that the interim challan dated 21.06.2025 also has a scrutiny note from the District Public Prosecutor dated 21.05.2025 under Section 9 of the Sindh Criminal Prosecution Service (Constitution, Functions & Powers) Act, 2009,¹ which raises serious objections concerning the Interim Challan. To date, neither the Interim Challan nor the Final Challan has been accepted. Counsel for the applicant/complainant contends that, in the circumstances, the Sessions Court could not grant bail under Section 319 PPC to the accused/HC-Mumtaz Ali, when the FIR was lodged under Section 302 PPC, until the Magistrate had considered the final challan.

Counsel for accused/respondent no.2 submits that, in fact, based on the statements available in the Police File made available by the I.O., the record reflected that the offence was cognizable under Section 319 PPC, which is bailable and not under Section 302 PPC. Learned APG also supports the arguments of the Counsel for the accused/respondent no.2, and has argued that Statements under Section 161 Cr.P.C. were available in the Police file, which the Sessions Court also saw and granted bail to the accused/respondent no.2 in accordance with law. The Sessions Court had/has the powers to grant bail under Section 319 PPC based on the interim challan submitted, even if not accepted, irrespective of the FIR lodged under Section 302 PPC.

Heard Counsel and learned APG. When this bench queried learned Counsel for accused/respondent No.2 whether the Magistrate could consider the change in the charging section by introducing Section 319 PPC and dropping Section 302 PPC without notice to the

¹¹ As per the Statement dated 09.09.2025 filed by the applicant/complainant Counsel, which was taken on record today, attaching a photocopy of the DPP District Malir Scrutiny Report dated 21.05.2025, also available in the Police File.

complainant, legal heirs of the deceased and witnesses and giving them the opportunity of hearing, he candidly conceded that the Magistrate could not do so. If this is accepted, then the Sessions Court should have considered the bail application under Section 302 PPC.

Based on the perusal of material available in this file, it is common ground that on 03.06.2025, when the Sessions Court took up the matter of bail to the accused/HC-Mumtaz Ali, the Magistrate had accepted neither an interim challan nor a final challan, nor were the concerned parties (complainant/legal heirs of the deceased/witnesses) had been heard concerning the dropping of the criminal charge of Section 302 PPC against the accused/HC-Mumtaz Ali. Thus, the Sessions Court cannot assume that the alleged offence under Section 319 PPC is made out rather than Section 302 PPC unless and until the learned Magistrate passes an appropriate order. Accordingly, in the circumstances, the Sessions Court could not have granted bail to the said accused under Section 319 PPC when Section 302 PPC was still in the field. He should have waited for the Final Report if he intended to consider the charging Section 319 at the time of consideration of the concession of bail.

In view of the above, the concession of bail granted by the IIIrd Additional Sessions Judge Malir vide Order dated 03.06.2025 is recalled and the accused/respondent no.2, HC-Mumtaz Ali son of Muhammad Bux is hereby ordered to be taken into custody. Accordingly, the I.O. Abdul Majeed Leghari, present in Court, has taken accused/respondent no.2/HC-Mumtaz Ali, son of Muhammad Bux, into custody, and this Cr. Misc. Application is disposed of in the above terms.

Accused/respondent is at liberty to file a fresh application for bail on the Final Report in accordance with the law.

JUDGE