

THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2801 of 2025

Applicants : Noor Alam son of Muhammad Azam
through Mr. Aamir Mansoob Qureshi,
Advocate

Complainant : Mufeez ur Rehman son of Ashraf Ali
through Ali Ahmed, Advocate

The State : Through Ms. Rahat Ehsan, Additional
Prosecutor General, Sindh

Date of hearing : 30.10.2025

Date of decision : 30.10.2025

ORDER

Jan Ali Junejo, J.- Through this order, I intend to dispose of the pre-arrest bail application filed by the applicant, Noor Alam son of Muhammad Azam, in FIR No. 461/2025 registered at Police Station Pakistan Bazar, Karachi, under Sections 302, 324, and 34 PPC, wherein he seeks pre-arrest bail. The applicant was earlier granted interim pre-arrest bail by this Court vide order dated 15.10.2025.

2. The facts, as per the record, are that the FIR was lodged on 07.09.2025 at 03:30 a.m. by Mufeez-ur-Rehman, alleging that on 06.09.2025 at about 6:15 p.m., while he along with his son Mujeeb-ur-Rehman was cleaning the cooler room near Rehmani Masjid, Orangi Town, Karachi, a quarrel ensued over the cooler room keys with co-accused Muhammad Alam @ Chamber, Muhammad Noor, and others. It is alleged that Muhammad Zakariya instigated Muhammad Umer Hamza, who thereupon took out his pistol and fired, hitting Mujeeb-ur-Rehman on his belly, resulting in his death, and also injuring the complainant on his leg. The FIR named the present applicant Noor Alam along with the co-accused, alleging their presence at the time of occurrence.

3. The applicant approached the learned Sessions Court by filing Pre-Arrest Bail Application No. 4760/2025, which was entrusted to the Court of the learned Additional Sessions Judge-XI, Karachi West, where he was granted interim pre-arrest bail on 17.09.2025. However, the said

interim relief was subsequently declined and recalled vide order dated 13.10.2025. The applicant thereafter approached this Court under Section 498 Cr.P.C., seeking pre-arrest bail.

4. Learned counsel for the applicant submits that no active, direct, or participatory role has been assigned to the applicant in the FIR; he argues that the act of firing, which caused the death of Mujeeb-ur-Rehman and injuries to the complainant, is solely attributed to the principal accused Muhammad Umer Hamza, while the role of instigation is specifically assigned to co-accused Muhammad Zakariya. He contends that the applicant was unarmed, has not been shown to have facilitated, abetted, or associated himself with the act of firing, and the only allegation against him is that of mere presence at the scene, which, under settled principles of criminal jurisprudence, does not constitute participation or shared intention within the meaning of Section 34 PPC. He further argues that the recovery of the weapon from the principal accused, coupled with the absence of any incriminating material against the applicant, brings his case within the meaning of further inquiry as contemplated under Section 497(2) Cr.P.C., particularly when the applicant has remained on interim bail, joined investigation, and there is no allegation of misuse of concession or any attempt to influence the course of justice; thus he prays for confirmation of ad-interim pre-arrest bail.

5. Conversely, learned counsel for the complainant vehemently opposes the bail; he argues that the applicant's presence at the place of occurrence, in the company of armed co-accused, reflects his association with the unlawful assembly and establishes a shared common intention to commit the offence. He contends that the applicant neither intervened, restrained, nor attempted to prevent the principal accused from opening fire inside a mosque, which demonstrates implicit approval of the violent act and squarely attracts constructive liability under Section 34 PPC. He further argues that the applicant fled the scene with the co-accused immediately after the incident, which reinforces the prosecution allegation that all accused persons acted in concert; therefore, he prays for dismissal of the bail application.

6. The learned A.P.G. for the State also opposes the confirmation of bail; she argues that the material collected during investigation, including the complainant's statement, medical evidence, and surrounding circumstances, prima facie connect the applicant with the commission of the offence. She contends that the participation of the applicant in the unlawful assembly, his presence throughout the occurrence, and his

failure to prevent or discourage the principal accused from committing a fatal act indicate shared intention, making him liable under Section 34 PPC. She further maintains that pre-arrest bail is an extraordinary relief, not to be granted unless mala fide is demonstrated, and that no element of false implication, ulterior motive, or misuse of police process has been shown; therefore, she prays for dismissal of the applicant's pre-arrest bail petition.

7. I have considered the respective submissions and carefully examined the record, including the FIR, the statement under Section 154 Cr.P.C., the interim charge-sheet, and other relevant material available on file. A tentative assessment of the material reflects that the specific role of firing is attributed to co-accused Muhammad Umer Hamza, who allegedly fired upon the deceased and also injured the complainant. The act of instigation is attributed to co-accused Muhammad Zakariya. However, no overt act, weapon recovery, or independent participation has been attributed to the present applicant, Noor Alam. The only allegation against him is that of his mere presence at the scene of occurrence.

8. It is a settled principle of criminal law that the mere presence of an accused at the scene of occurrence, without any act of participation, assistance, or instigation, does not attract the mischief of Section 34 PPC unless a common intention is established through independent and credible corroborative evidence. In the present case, the prosecution material so far does not disclose any such evidence against the applicant. Likewise, a general allegation of presence, unaccompanied by any corresponding injury or overt act, cannot by itself entail liability under the said provision unless supported by reliable and corroborative material demonstrating that the accused shared a common intention with the principal assailant. Reference may be made to the case of **Bashir Ahmed and others v. The State and another (2022 SCMR 1187)**, wherein the Honourable Supreme Court of Pakistan was pleased to hold that: *"The alleged criminal act should be in furtherance of common intention and not the common intention simpliciter. Mere presence of an accused with an accused who commits the crime would not constitute his common intention unless there is an evidence referring to the criminal act of that accused committed in furtherance of common intention with the other accused"*. Emphasis supplied.

9. The principal accused Muhammad Umer Hamza has been arrested, and the crime weapon allegedly used in the incident has been recovered from his possession. The investigation appears to have been

completed and the challan submitted. No incriminating material or weapon has been recovered from the present applicant.

10. It is also a well-recognized principle that pre-arrest bail is an extraordinary relief and is not to be withheld when the record indicates malafide intention, false implication, or lack of direct evidence connecting the applicant with the crime. The object of Section 498 Cr.P.C. is to prevent humiliation, harassment, or misuse of process of law. In the absence of a clear and active role, continued denial of bail would amount to oppressive misuse of authority.

11. In similar circumstances, the Hon'ble Supreme Court has consistently held that where further inquiry into the guilt of the accused is required and the role attributed is merely passive or indirect, the benefit of bail should be extended.

12. Prima facie, therefore, the role of the applicant appears doubtful and requires further inquiry within the meaning of Section 497(2) Cr.P.C. No exceptional circumstance has been pointed out justifying the arrest of the applicant at this stage. The applicant has remained on interim bail for a considerable period, has joined the investigation, and there is no allegation of misuse of concession or attempt to influence the prosecution witnesses. His custody, therefore, is not required for any investigative purpose.

13. In view of the foregoing discussion and on tentative assessment of the material available on record, the case against the applicant falls within the ambit of further inquiry as envisaged under Section 497(2) Cr.P.C. Consequently, the interim pre-arrest bail earlier granted to the applicant vide order dated 15.10.2025 is hereby confirmed on the same terms and conditions.

14. The applicant is, however, directed not to misuse the concession of bail in any manner. In the event of any non-compliance, the prosecution shall be at liberty to seek cancellation of bail. The observations made hereinabove are tentative in nature, confined to the disposal of this bail application, and shall not prejudice the case of either party during trial. These are the reasons for the Short Order dated 30.10.2025.

JUDGE