

ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Appeal No. S-05 of 2026.
(Niaz Hussain and another v. The State)
Connected with Criminal acquittal appeal No.S-12 of 2026
&
Criminal Revision application No. S-08 of 2026.

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1. For hearing of M.A No.342/2026 (426 CrPC)
 2. For the hearing of the main case.

16.03.2026.

M/s Achar Khan Gabol and Ghulam Ali Bozdar, Advocates for the appellants.

Mr. Gulzar Ali Malano, Assistant Prosecutor General.

The record reflects that the appellants **Niaz Hussain** and **Muharram Kalhor** were booked in FIR No.05 of 2021 registered at Police Station Bakhri for offences punishable under Sections 452, 382, 337-F(vi), 429, 148, 149 and 504 PPC. After conducting a full-fledged trial, the learned Additional Sessions Judge, Kandiaro vide judgment dated 15.01.2026, in Sessions Case No. 352 of 2021, convicted the present appellants, whereas the remaining co-accused were acquitted. The appellant **Niaz Hussain** was convicted and sentenced to suffer rigorous imprisonment for five years with fine of Rs.20,000/- and in case of default of payment of fine to suffer simple imprisonment for two months more. He was further convicted under Section 429 PPC and sentenced to suffer simple imprisonment for five years with fine of Rs.20,000/- and in case of default to suffer simple imprisonment for two months more. The appellant **Muharram Kalhor** was also convicted and sentenced to suffer imprisonment for five years and to pay Daman amount of Rs.20,000/- and to remain in jail till payment of the said amount. All the sentences were ordered to run concurrently and the benefit of Section 382-B Cr.P.C was extended to the appellants.

The prosecution case in brief is that the complainant lodged FIR on 02.06.2021 with regard to the incident, which allegedly occurred on 01.06.2021, wherein it was alleged that the accused persons, armed with deadly weapons, entered into the land in question, caused injuries to the

complainant party, committed theft of cattle and also killed the complainant's tame dog. After the completion of the trial, the impugned judgment was passed, whereby the present appellants were convicted.

The learned counsel for the appellants submits that the appellants have been awarded short sentences of five years, and the appeals are not likely to be heard in the near future, as, despite the deposit of costs, the paper book has not yet been prepared. He further contends that the role attributed to the appellants requires a deeper appreciation of evidence, which can only be examined at the time of final hearing of the appeal. He relied upon the cases reported as **2022 SCMR 1555**, **2011 YLR 403**, and **2005 PCr.LJ 657**.

The complainant is present in person and submits that he has already filed an acquittal appeal against the co-accused who were acquitted by the trial Court and also filed a revision application for enhancement of the sentence of the appellants. However, it has come on record that the said acquittal appeal and the revision application, even notices have not been issued. It is also noted that although the complainant's counsel filed a vakalatnama on 06.03.2026, the complainant stated that his counsel has proceeded to his home due to fasting.

The learned Assistant Prosecutor General opposed the application and supported the impugned judgment but conceded that the appeal can be heard after preparation of the paper book.

Heard learned counsel for the appellants, the complainant in person and the learned Assistant Prosecutor General, and perused the material available on record.

Before the trial Court, the present appellants remained on bail throughout the proceedings, as reflected from the impugned judgment, and the complainant did not challenge their bail status at any stage during the trial. The sentence awarded to the appellants is of short duration and, in absence of the paper book, there appears no likelihood that the appeal will be heard in the near future, as also evident from the order sheet.

It is further noted that the co-accused, who were attributed with similar roles, have already been acquitted by the learned trial Court through the impugned judgment. Therefore, the case of the present appellants at least calls for consideration for suspension of sentence and grant of bail during the pendency of the appeal.

There is complete silence on the record to suggest that the appellants are desperate, dangerous, or hardened criminals, or that they were previously convicted in any other case. Moreover, nothing has been brought on record to show that the appellants have contributed in any manner to the delay in the disposal of the main appeal.

In these circumstances, if the sentence awarded to the appellants is not suspended, there is every likelihood that they may undergo the entire sentence before the decision of the main appeal on merits. Such a situation would amount to awarding punishment in advance, which is neither just nor proper. Such contentions mentioned *supra* find support from the cases of **Makhdoom Javed Hashmi v. The State'** (2008 SCMR 165), **'Adnan A. Khawaja v. The State'** (2008 SCMR 1439) and **'Anwar-ul-Haq v. National Accountability Bureau'** (PLD 2009 Supreme Court 388), **Mahmood Iqbal v. The State** (2008 MLD 1376 (Lahore-DB), **Rizwan and another v. Federation of Pakistan through Secretary Ministry and 2 others** (2013 YLR 520 (Sindh-DB), **Ilyas alias Billu v. The State** (2008 MLD 312 (Lahore-DB). **Nazeer Ahmad and 2 others v. The State** (2005 PCr.LJ 657 Karachi) and **Abdul Hameed v. Muhammad Abdullah and others** (1999 SCMR 2589)." (PLD 1995 Karachi 209), **Liaqat and another v. The State"** (1995 SCMR 1819) and **"Naveed alias Navidi v. The State"** (2011 PCr.LJ 1971)

Therefore, keeping in view the foregoing facts and circumstances of the case, the instant application under section 426 Cr.P.C bearing No. 342 of 2026 is hereby allowed, the impugned judgment is suspended. Consequently, the present appellants, namely **Niaz Hussain S/O Ghulam Siddiqui Kalhoro** and **Muharram S/O Muhammad Prayal Kalhoro**, are released on bail, subject to furnishing solvent surety in the sum of Rs.50,000/- each to the satisfaction of the Additional Registrar of this Court.

The office is directed to place the signed copy in the record of the captioned matter. Re-list on 27-04-2026.

JUDGE