

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Appln. No. 2860 of 2025

Cr. Bail Appln. No.2861 of 2025.

Cr. Bail Appln. No.2862 of 2025.

Cr. Bail Appln. No.2863 of 2025.

Date	Order with signature of hon'ble Judge
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1. For hearing of M.A No. 15193 of 2025.

2. For hearing of bail application.

08.12.2025.

Mr. Muhammad Jamil Ahmed, Advocate for the applicants.

M/s Aamir Raza Naqvi and Haad Abid Paggawala, Advocates for legal heirs.

Syed Mahmood Alam Rizvi, Advocate for the complainant.

Mr. Mumtaz Ali Shah, D.P.G.

O R D E R

1&2. By means of this common order, this Court intends to dispose of these four connected bail applications alongwith listed M.A No.15193 as all these matters arise out of the same proceedings and require determination in the backdrop of the applicants' conduct while invoking and availing the discretionary jurisdiction of this Court in the cases/crimes arisen out of FIR No.344/2025 registered at Police Station Thatta for offences under sections 302, 324, 504, 427, 114 and 34, P.P.C by private complainant as well as FIR No. 249/2023 registered with P.S Thatta for offence under Sections 324, 353, 34 PPC lodged on behalf of the state. Prior to approaching this Court, the applicants had obtained protective bail from High Court Islamabad for a limited period up to 21.10.2025 on the express representation that they intended to approach the concerned Court to avail appropriate remedy under law. However, instead of acting upon that representation, the applicants approached this Court on 20.10.2025 and instituted the present pre-arrest bail application by invoking concurrent jurisdiction of this Court on the assertion that the complainant was an influential person, being a sitting MNA/MPA, and that on account of such alleged influence they apprehended approaching the trial Court. On such premise alone, and without touching the merits of the

case, this Court admitted the applicants to interim pre-arrest bail on 20.10.2025 and fixed the matter for hearing on 06-11-2025.

2. Thereafter, the applicants continued to enjoy interim pre-arrest protection granted by this Court. The matter came up on several dates, including 06.11.2025 and 18.11.2025, during which the interim concession remained operative. On 01.12.2025, an urgency application was moved on behalf of the applicants seeking refixation of the date as matter was already fixed on 03-12-2025 therefore it was refixed on 04-12-2025. On 04.12.2025, a further request for adjournment was made on the ground of change of counsel, despite objection that the applicants had already been enjoying interim pre-arrest bail since 20.10.2025. Ultimately, the matter was fixed for 05.12.2025 for hearing.

3. On 05.12.2025, when the matter was called, none of the applicants appeared before this Court. In their absence, an application under section 561-A, Cr.P.C., bearing the date 20.10.2025, was taken up, wherein it was asserted that an interim charge-sheet had been submitted before the trial Court, and that on the said date the matter was fixed before trial Court, therefore, they were present before the concerned Court since 8:30 a.m.

4. The controversy before this Court is not merely whether protective bail could be granted in abstract, but whether, after invoking concurrent jurisdiction, enjoying interim pre-arrest bail over multiple dates, avoiding the trial Court despite subsisting protection, and remaining absent on the date fixed for hearing, the applicants could lawfully seek conversion of a pending pre-arrest bail application into protective bail by invoking section 561-A, Cr.P.C.

5. Learned counsel for applicants submitted that the Court is not rendered functus officio merely by reason of the applicants' absence and contended that the inherent jurisdiction of this Court under section 561-A, Cr.P.C. could still be exercised to secure the ends of justice. It was argued that the Court possessed ample authority to mould the relief and to convert the pre-arrest bail application into protective bail even in the absence of the applicants. Learned counsel reiterated that the applicants apprehended arrest on account of the alleged influence of the complainant and maintained that interim protection ought to be continued. An objection was also raised regarding the presence and participation of the complainant through counsel without written permission under section 493, Cr.P.C. In support of the aforesaid submissions, learned counsel for the applicant's placed reliance upon *Syed Jawad Shah v. The State* (2022 SCMR 660), *Asim Murtaza Khan v. The State* (2021 SCMR 1844),

Muhammad Yaseen alias Yaseen and another v. The State (2010 YLR 2334 Karachi), and *Laiquat Ali Jatoi v. The State* (1995 PCrLJ 1331 Karachi).

6. In response to the objection raised regarding non-filing of an application under section 493, Cr.P.C., learned counsel for the complainant, Mr. Ameer Raza Naqvi, contended that the legal position of the complainant has materially changed after the amendment in section 302, P.P.C., whereby the offence has been made compoundable only at the instance of the legal heirs, thereby recognising and strengthening the participatory role of the complainant at various stages of the proceedings. It was submitted that, in view of this changed legal landscape, superior Courts have consistently been issuing notices to the complainant/legal heirs at the bail stage, and their participation through counsel at such stage has become an accepted judicial practice. Learned counsel further contended that section 493, Cr.P.C. is primarily meant to regulate assistance to the prosecution during the trial, where evidence is to be recorded and proceedings are to be conducted on a day-to-day basis, and that the said provision does not strictly apply to bail proceedings before the High Court. It was argued that the objection raised by the applicants is thus misconceived, technical in nature, and does not affect the legality of the proceedings at the bail stage.

7. Whereas the learned APG primarily contended that the applicants have misused the concession of bail granted by this Court and that their conduct throughout disentitles them from any further indulgence. It was argued that the applicants have failed to point out any mala fide on the part of the complainant, which is a sine qua non for grant or continuation of pre-arrest bail. Learned APG drew the attention of the Court towards the grounds of the bail application, and submitted that the applicants, in their own pleadings, have substantially admitted the occurrence and their participation therein. It was pointed out that in the bail application the applicants have themselves stated that the incident was neither pre-planned nor motivated, and that, without conceding the prosecution version, it has been pleaded that even if the allegations are taken at face value, the incident lacked premeditation and was the result of a sudden and provoked altercation occurring in the heat of passion upon a sudden quarrel. Learned APG argued that such pleadings demolish the very foundation of pre-arrest bail, as the applicants have not only failed to establish mala fide or ulterior motive but have also relied upon a version which, on their own showing, acknowledges the occurrence and their role therein. Learned DPG further pointed out that the proceedings before the

trial Court were fixed for 08.12.2025 and not for 05.12.2025, rendering the plea of presence before the trial Court factually incorrect. In support of the above submissions, learned counsel for the complainant placed reliance upon Kamran v. The State (2024 SCMR 1419) and Engineers Study Forum Registered and another v. Federation of Pakistan and another (2016 SCMR 1961), whereas learned APG relied upon Rana Muhammad Arshad v. Muhammad Rafique and another and Murad Khan v. Fazal-e-Subhani and another (PLD 1983 SC 82).

8. Heard. Record perused.

9. The record warrants indulgence to be taken from the case diaries produced by the learned DPG, which illuminate the applicants' conduct before the trial Court. On 12.11.2025, an interim challan was submitted against all four applicants and proceedings were initiated under section 512, Cr.P.C., despite the fact that at the relevant time the applicants were enjoying interim pre-arrest bail granted by this Court. Notwithstanding such protection, the applicants did not appear. Thereafter, the case was fixed before the concerned Court on 19.11.2025 and again on 27.11.2025 for submission of final challan; on both occasions the applicants again chose not to appear. Their continued non-appearance before the forum of ordinary jurisdiction, despite subsisting interim protection, reflects deliberate avoidance of the trial process. What further accentuates the lack of bona fides is that the applicants projected alleged presence before the concerned Court only when the present bail application was fixed for final hearing before this Court on 05.12.2025, whereas the trial Court proceedings were in fact fixed for 08.12.2025. The plea advanced through section 561-A, Cr.P.C. that the applicants had surrendered before the trial Court on 05.12.2025 is thus not borne out from the judicial record. The sequence, viewed cumulatively, reveals selective and timed conduct aimed at retaining protection while evading the ordinary course of law.

10. Pre-arrest bail is an extraordinary and discretionary relief, not to be retained as a matter of course. Its continuation depends not only on allegations but equally on bona fide conduct, diligence in prosecuting the relief, and adherence to the Court's process. The applicants' forum-shifting, repeated adjournments, absence on the date fixed for hearing, and avoidance of joining concerned courts proceedings despite subsisting protection disentitle them to further indulgence.

11. The scope of section 561-A, Cr.P.C. is settled: inherent jurisdiction is exceptional and residual, to be exercised sparingly to prevent abuse of process or to secure the ends of justice. It cannot override express

provisions of the Code, substitute statutory remedies, or be invoked to revive, extend, or convert a relief imperilled by a litigant's own deliberate default. Inherent powers exist to prevent abuse not to legitimise or perpetuate it. The fact that the application under section 561-A, Cr.P.C., though dated 20.10.2025, was pressed only on the date of absence fortifies the conclusion that it was retained as a fallback to prolong interim protection under a different nomenclature.

12. The objection regarding participation of the complainant through counsel is overruled. Bail proceedings before the High Court are not governed by the rigid framework applicable to trial; section 493, Cr.P.C. regulates conduct before the trial Court and does not bar hear the complainant at bail stage, particularly in view of the post-amendment scheme of section 302, P.P.C.

13. A careful examination of the authorities cited on behalf of the applicants shows that none of them supports the proposition that, after availing interim pre-arrest bail for a considerable period and thereafter remaining absent on the date fixed for hearing, an accused is entitled, as of right, to conversion of such bail into protective bail through invocation of section 561-A, Cr.P.C. In the case of Syed Jawad Shah (supra), the Honourable Supreme Court emphasized the centrality of compliance with the Court's process and attendance before the competent forum in bail matters; the judgment does not sanction conversion of relief after deliberate absence. The case of Asim Murtaza Khan (supra) pertains to trial-stage objections regarding admissibility of evidence and does not deal with bail proceedings or conversion of relief. The case of Muhammad Yaseen (Supra) concerns short, transitional protective bail granted in circumstances free from misuse of concession and is clearly distinguishable. The case of Liaquat Ali Jatoi (Supra) acknowledges the existence of inherent jurisdiction but cautions against its exercise to override statutory bail provisions or to legitimise abuse of process.

14. Conversely, the authorities relied upon by the complainant and the learned DPG squarely apply to the facts at hand. In case of Kamran v. The State (supra) and Muhammad Saeed v. The State (supra), the Honourable Supreme Court reiterated that discretionary relief in bail matters is not to be continued mechanically, and that conduct of the accused remains a relevant consideration. The case of Engineers Study Forum underscores that access to justice cannot be converted into a licence to prolong proceedings through dilatory tactics. In the cases of Rana Muhammad Arshad (supra) and Murad Khan (supra) the Supreme Court

authoritatively held that inherent jurisdiction exists to prevent abuse of process, not to facilitate it, and that section 561-A, Cr.P.C. cannot be invoked to defeat the natural consequences of a party's own conduct or to circumvent express provisions of law.

15. When the aforesaid principles are applied to the present case where the applicants invoked concurrent jurisdiction, obtained interim pre-arrest bail on 20.10.2025, availed four consecutive dates of hearing, avoided appearance before the trial Court despite proceedings under section 512, Cr.P.C. on 12.11.2025, 19.11.2025 and 27.11.2025, and thereafter remained absent on 05.12.2025 while pressing an application under section 561-A, Cr.P.C., it becomes evident that the authorities cited by the applicants do not attach to the facts.

16. In view of the foregoing, this Court finds that the applicants, who are called absent today, have deliberately misused the concession of interim pre-arrest bail, failed to prosecute their application, avoided appearing before the trial Court despite protection, and attempted to prolong relief by invoking section 561-A, Cr.P.C. without lawful basis. Therefore, the interim pre-arrest bail granted vide order dated 20-10-2025 was recalled, consequently interim pre arrest bail application was dismissed for non-prosecution, and the application under section 561-A, Cr.P.C. was dismissed as not maintainable and devoid of merit. These are the reasons of my short order dated 05-12-2025.

17. It is clarified that the observations made herein are tentative, based on a *prima facie* assessment for deciding the present applications, and shall not prejudice the case of either party at any subsequent stage.

JUDGE

