

## IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S-1159 of 2025

Applicant : Aqeel Ahmed S/o Muhammad Mansha, Samor  
Through Mr. Ghulam Shabbir Shar, Advocate

Complainant : Muhammad Waris S/o Muhammad Ali, Bhutto,  
Through Mr. Irshad Hussain Dharejo, Advocate

The State : Through Mr. Mansoor Ahmed Shaikh, DPG

Date of hearing : 19.01.2026  
Date of order : 19.01.2026

### **ORDER**

**KHALID HUSSAIN SHAHANI, J.**— Applicant, Aqeel Ahmed, seeks post-arrest bail in a case bearing Crime No.211 of 2023, for offences under sections 302, 506/2 and 34 PPC, registered at Police Station Mirwah, District Khairpur, arising out of the alleged murder of one Muhammad Arif Bhutto. His earlier plea for bail was declined by the learned trial Court vide order dated 22.11.2025.

2. As unfolded in the FIR lodged on 16.09.2023, complainant Muhammad Waris Bhutto stated that the deceased Muhammad Arif Bhutto, was his real brother and that the present applicant, residing in front of their house, was a criminal-minded and quarrelsome person who frequently visited their *otaq* without invitation or justification. The deceased repeatedly forbade and restrained the applicant from visiting his *otaq*, which allegedly engendered deep-rooted resentment and enmity; the complainant asserts that the applicant openly extended threats that he would “see” Muhammad Arif, thereby nurturing a prior motive. It is further alleged that on 13.09.2023, after taking the night meal, the deceased Muhammad Arif, along with Aijaz and the Pesh Imam, retired to sleep on cots placed in the *otaq*. At about 0030 hours on 14.09.2023, the complainant, on hearing the sound of a motorcycle approaching near the *otaq*, came out of the house in the company of his maternal uncle, Sarang Ali Bhutto, and his cousin, Asif, all carrying torches.

In the light emitted by their torches and the solar bulbs installed in front of the house, they allegedly saw and recognized the applicant Aqeel Ahmed, armed with a pistol, seated on a motorcycle together with two unknown accomplices, also armed with pistols. At that juncture, the applicant is said to have aimed and fired a pistol shot directly at Muhammad Arif, which hit him on the head near the temple. Immediately thereafter, the applicant and his companions allegedly issued threats of dire consequences to the complainant party, warning them not to come near, and they fled away on the motorcycle. The complainant party then rushed to the *otaq* and noticed that Muhammad Arif had sustained a firearm injury on the head, with blood oozing and brain matter protruding outside, and that he had succumbed to the injury almost instantaneously. Due to the threats held out and the prevailing fear and shock, they did not leave the house during the night. In the early hours of the morning, the police were informed; the dead body was taken into custody and subjected to post-mortem examination. After completion of initial medico-legal formalities and funeral and condolence rituals, the complainant lodged FIR *inter alia* on the above facts.

3. Learned counsel for the applicant argued with vehemence that the applicant has been falsely roped in due to prior enmity with the complainant party, which enmity stands acknowledged in the FIR itself and, therefore, furnishes a strong basis for false implication. He contended that the narrative set up in the FIR is wholly fabricated, concocted and engineered after due deliberation, and that the applicant had no nexus whatsoever with the alleged occurrence. It was stressed that the FIR was lodged with an unexplained delay of about two days from the date of occurrence, which, according to learned counsel, is suggestive of consultation, deliberation and embroidery of facts, thereby rendering the prosecution version inherently doubtful at the very inception. He further submitted that the alleged incident

took place during dark hours of the night, and the claim of identification in the light of torches and solar bulbs is highly unsafe, particularly where the witnesses are admittedly inimical; such circumstances, he maintained, render identity of the assailant doubtful and the case one of further inquiry.

4. Learned counsel emphasized that material prosecution witness, including Muhammad Yousif, sworn affidavit in the bail proceedings of co-accused Kashif Hussain, disassociating himself from the occurrence and asserting that he neither witnessed the incident nor can attribute any role to the present applicant. This affidavit, it was argued, strike at the root of the prosecution story and show that the alleged eye-witness account is a later concoction designed to strengthen a weak case. He further maintained that the remaining witnesses are closely related to the complainant and are, therefore, partisan and interested; their statements, in his submission, cannot be safely relied upon at this stage without independent corroboration. It was also argued that co-accused Kashif Hussain has already been granted post-arrest bail by a competent Court, and on the doctrine of consistency and parity the present applicant, whose case, according to the learned counsel, stands on an equal if not better footing, is also entitled to similar relief. Referring to the applicant's personal circumstances, learned counsel submitted that the applicant is the sole male breadwinner of his family, has no previous criminal record, and his continued incarceration would visit irreparable hardship upon his dependents while serving no useful purpose as investigation has already been completed. On the strength of these submissions, learned counsel urged that the case, at the least, calls for further inquiry within the purview of section 497(2), Cr.P.C, and prayed for grant of post-arrest bail, placing reliance on a catena of precedents, including (2021 SCMR 130), (2023 SCMR 1243), (2025 SCMR 318), (2025 SCMR 364), (2022 SCMR 663), (2023 SCMR 884), (2016 SCMR 2089), (2018 YLR

716), (2016 YLR 2099), (2014 YLR 1033), (2008 YLR 1696), (2009 P.Cr.L.J 1448), (2012 MLD 1876), (1991 SCMR 111) and (1999 P.Cr.L.J 328).

5. Conversely, learned Deputy Prosecutor General, duly assisted by learned counsel for the complainant, vehemently opposed the prayer for bail. It was contended that the applicant is specifically nominated in the FIR by name and parentage with a clear and unequivocal role assigned to him of having fired a pistol shot at the head of the deceased, which proved fatal. Learned D.P.G. submitted that the ocular account furnished in the FIR is straightforward, detailed and consistent, leaving no ambiguity regarding the applicant's participation. He further argued that the offence under sections 302 PPC is punishable with death or imprisonment for life, thereby attracting the prohibitory clause contained in section 497(1), Cr.P.C. In such like offences, it was argued, the concession of bail is to be granted sparingly and only where the case squarely falls within the ambit of further inquiry or where mala fide is evident on the face of the record, which is not the position in the present matter. For affidavit of P.W Muhammad Yousif it was argued that said witness has never appeared before the learned trial court, nor such affidavit was sworn through biometric to prove its genuineness. Learned D.P.G submitted that there exists reasonable grounds within the contemplation of section 497(1), Cr.P.C, to believe that the applicant is *prima facie* involved in the commission of the crime, keeping in view the direct ocular account and corroborative medical evidence and prayed for dismissal of the bail application, placing reliance, *inter alia*, on the judgments reported as (2025 MLD 1702), (2024 SCMR 1576), (2023 SCMR 1724), (2020 SCMR 937) and (2020 SCMR 1486), which emphasize that where an accused is specifically named with a defined role in a murder case

and the medical evidence lends support to the ocular account, bail is ordinarily to be refused.

6. Learned counsels for the parties have been heard at length and the material so far brought on record has been examined with their able assistance. From a tentative appraisal of the available record, it emerges that the applicant is specifically named in the FIR and is attributed a distinct and active role of firing a pistol shot at the head of the deceased, resulting in his instantaneous death. The FIR further discloses that the applicant, accompanied by two unknown co-accused, all armed with pistols, reached the place of occurrence on a motorcycle and, after exchanging threats, the applicant fired a straight shot at the deceased, causing a devastating head injury with extrusion of brain matter. The post-mortem report of deceased Muhammad Arif Bhutto reflects firearm injuries to the head, which are in consonance with the ocular version narrated in the FIR and support, at this stage, the allegation that a close-range firearm shot caused the fatal injury. In this context, guidance may be sought from the judgment of the Hon'ble Supreme Court of Pakistan in the case of *Ghani Khan v. The State* (2020 SCMR 594), wherein bail was declined to an accused specifically named in the FIR with a clear role of firing upon the complainant, the allegation being prima facie supported by medical evidence, and the offence falling within the prohibitory clause of section 497(1), Cr.P.C, thus rendering him not entitled to the concession of bail.

7. The admitted existence of prior enmity between the parties, though a factor requiring cautious scrutiny of evidence at the trial, by itself does not erode the prosecution case at the bail stage when the applicant stands specifically nominated with a defined and lethal role, supported by consistent ocular and medical evidence. The complainant and the cited eye-witnesses have consistently implicated the applicant as the principal

assailant who fired upon the deceased; at this preliminary stage, such material sufficiently connects the applicant with the alleged offence, which squarely falls within the prohibitory clause of section 497(1), Cr.P.C.

8. As regards the argument concerning delay of about two days in lodging the FIR, the record indicates that the occurrence took place in the late hours of the night; the deceased sustained a fatal firearm injury to the head and, according to the complainant, died on the spot. It is further reflected that due to threats allegedly extended by the accused persons, the complainant party remained confined, under shock and fear, during the night, and the police were informed in the early morning, whereafter the dead body was subjected to post-mortem examination. Subsequently, the complainant remained engaged in the funeral and condolence ceremonies and lodged the formal FIR upon completion of these unavoidable rituals. In the circumstances of the present case, the delay in lodging the FIR appears to be reasonably explained and, at this stage, does not by itself create such doubt as would entitle the applicant to bail. It is a settled proposition that mere delay in registration of FIR is not per se fatal to the prosecution case if the delay stands satisfactorily explained and does not appear to have been actuated by mala fide or design. The superior Courts have repeatedly held that where the ocular account is otherwise confidence-inspiring and is supported by medical and circumstantial evidence, delay in setting the law into motion loses much of its sting and cannot be treated as a decisive ground for bail in the face of strong incriminating material.

9. The contention that the applicant is entitled to bail on the ground of parity with co-accused Kashif Hussain, who has been granted bail, is also devoid of force. The rule of consistency is not an inflexible formula; it presupposes that the case of the accused invoking parity is analogous in all material respects, including the role assigned, nature of participation and

degree of culpability. In the present matter, the applicant stands in a clearly distinguishable position, inasmuch as he is charged with the primary and direct role of causing the fatal firearm injury to the deceased, whereas the allegation against the bailed co-accused is of a different and comparatively lesser degree. The Hon'ble Supreme Court of Pakistan, in the case of *Bakhti Rahman v. The State and another* (2023 SCMR 1068), has authoritatively held that the doctrine of parity does not apply where the accused seeking bail on the basis of consistency is attributed a distinct, graver or more active role, particularly where he is alleged to have caused the fatal injury, and that "like cases should be treated alike" only when roles, overt acts and surrounding circumstances are appropriately comparable. Applying this well-settled principle, the applicant, being the alleged principal shooter, cannot successfully invoke parity with a co-accused whose role has been adjudged to be of a lesser and distinguishable nature.

10. As regards the affidavits said to have been sworn by Muhammad Yousif in the bail proceedings of co-accused Kashif Hussain, wherein he purportedly disowns the occurrence or his status as an eye-witness, such material cannot be accorded determinative weight at the present stage. The record reflects that Muhammad Yousif has not so far appeared before the learned trial Court, nor has any biometric-verified affidavit of his been produced in these proceedings in accordance with the applicable procedural requirements. Unverified affidavit, tendered collaterally and outside the rigours of cross-examination, cannot override the formal statements recorded under the law, particularly where the applicant stands specifically nominated with a defined role in a capital charge. It is by now trite that disputed documents and untested affidavits, not subjected to judicial scrutiny, are not to be treated as conclusive at the bail stage to discredit the prosecution version, especially when it stands supported by medical and other attending

circumstances. Questions regarding the veracity, voluntariness or probative value of such affidavits are matters eminently falling within the domain of the trial Court, to be determined after recording of evidence and cross-examination. At this juncture, therefore, such material does not create a reasonable doubt of the kind contemplated by section 497(2), Cr.P.C, so as to entitle the applicant to the extraordinary concession of bail in a case of capital punishment. The precedents cited on behalf of the applicant have also been examined and are found to be distinguishable on facts, as they largely pertain to situations where the accused was either not specifically named, was assigned a secondary role, or where medical and ocular evidence were at variance, circumstances which are materially absent here.

11. In view of the foregoing discussion, the specific and active role attributed to the applicant, the corroboration furnished by the medical evidence, the nature and gravity of the offence falling within the prohibitory clause, and the inapplicability of the rule of parity in the facts of the case, no ground is made out for grant of post-arrest bail. The material so far collected provides reasonable grounds, within the meaning of section 497(1), Cr.P.C., for believing that the applicant is prima facie connected with the commission of the alleged offence; the case does not, at this stage, appear to be one of further inquiry. Consequently, the present Criminal Bail Application stands dismissed.

12. The observations made herein are purely tentative and have been recorded only for the purpose of deciding this bail application. They shall not prejudice or influence the learned trial Court in any manner, which shall proceed strictly in accordance with law and on the basis of evidence adduced before it.

**J U D G E**