

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. S-1153 of 2025

Applicant : Sohail @ Sohail Ahmed s/o Dilawar Khan @ Dado
Through Mr. Ammar Ali Shahani, Advocate

Complainant : Mujahid Ali s/o Allah Dino, Phulpoto
Through Mr. Miran Bux Shar, Advocate

The State : Through Mr. Mansoor Ahmed Shaikh, DPG

Date of hearing : 15.01.2026
Date of order : 22.01.2026

ORDER

KHALID HUSSAIN SHAHANI, J.— The applicant, Sohail @ Sohail Ahmed, seeks confirmation of ad-interim pre-arrest bail earlier extended to him by this Court vide order dated 01.12.2025 in a case baring Crime No.84 of 2025, registered under Sections 324, 452 and 337-F(iii) PPC at Police Station Ahmedpur, District Khairpur.

2. Succinctly, the prosecution case, as set up by complainant Mujahid Ali, is that on 12.07.2025, on account of a dispute over immovable property, the applicant accompanied by co-accused Nazal, Latif, Azizullah, Mir Muhammad, Jaffer Ali and an unidentified person, allegedly armed with lethal weapons, criminally trespassed into the complainant's house. It is alleged that they declared that since the complainant had earlier caused injuries to Habibullah, cousin of the applicant, he would not be spared, whereupon the applicant purportedly fired at Allah Ditto, the complainant's nephew, with the intention to commit his murder, causing him a firearm injury below the elbow of his left arm, after which the accused decamped towards their homes. The injured was shifted to RHC Pir-Jo-Goth and thereafter referred to Civil Hospital Khairpur, whereafter the FIR was lodged on the basis of the above narration.

3. Learned counsel for the applicant contends that the applicant is innocent and has been falsely roped in this case. He submits that the present FIR is a counter-blast to a case bearing Crime No.68 of 2025 of P.S Ahmedpur,

District Khairpur, registered against the son, brother and other close relatives of the complainant, in which Habibullah, the cousin of applicant sustained a firearm injury on his chest; hence false implication of the applicant in the present matter cannot be ruled out. It is next argued that the injury attributed to the applicant is on a non-vital part of the body of injured Allah Ditto, classified as *ghayr-jaifah mutalahimah* under Section 337-F(iii) PPC, carrying a maximum punishment of three years, and thus does not fall within the ambit of the prohibitory clause of Section 497(1) Cr.P.C. Learned counsel further submits that although the applicant and co-accused are shown as armed with lethal weapons, only a single shot is alleged and there is no accusation of repeated firing by the applicant, despite the complainant party allegedly being at their mercy, which raises a serious question as to whether the applicant shared the requisite common intention to attempt *qatl-i-amd* of the injured, and whether the ingredients of Section 324 PPC are, in fact, attracted, an issue that can only be properly decided at trial. It is also argued that no empty cartridge has been recovered from the place of occurrence to corroborate the ocular account that the injury was caused in the complainant's house. Learned counsel further submits that the offence under Section 452 PPC, punishable up to seven years, likewise does not fall within the prohibitory clause of Section 497 (1) Cr.P.C. He adds that all co-accused have already been granted pre-arrest bail by the learned trial Court vide order dated 14.11.2025, and on the touchstone of the rule of consistency, the applicant is equally entitled to the same relief. Learned counsel also points to the unexplained delay of about 9½ hours in lodging the FIR, which, on settled principles, affords sufficient room for deliberation and consultation. It is lastly argued that all cited eyewitnesses are closely related to the complainant and no independent person from the locality has been associated as a witness.

4. Conversely, learned DPG, assisted by learned counsel for the complainant, vehemently opposes the application. They contend that the

applicant is specifically named in the FIR with a clear and distinct role of firing at the injured with the intention to commit his murder. They argue that the injury below the elbow of the left arm stands fully corroborated by the Medico-Legal Certificate and, in view of the allegation of attempt to commit *qatl-i-amd* under Section 324 PPC, the case squarely falls within the prohibitory clause of Section 497(1) Cr.P.C. They maintain that the delay in lodging the FIR stands satisfactorily explained, as the complainant first shifted the injured to RHC Pir-Jo-Goth and thereafter to Civil Hospital Khairpur for treatment. It is further argued that after availing interim relief from this Court, the applicant has repeated the offence, as a case bearing Crime No. 152 of 2025 under Sections 324, 114, 148 and 149 PPC of P.S. Ahmedpur has been registered against him, demonstrating that he does not deserve the equitable relief of pre-arrest bail.

5. The medical evidence reflects that injured Allah Ditto sustained a firearm injury below the elbow of his left arm, which has been opined as *ghayr-jaifah mutalahimah* within the contemplation of Section 337-F(iii) PPC. The injury is described as fresh and caused by a firearm; however, significantly, it has not been declared *jaifah* or otherwise life-endangering in nature.

6. Without embarking upon a minute appraisal of the evidence, which squarely falls within the remit of the trial Court, the following features, when considered cumulatively, *prima facie* bring the matter within the purview of “further inquiry” as envisaged by Section 497(2) Cr.P.C:

- i) The delay of about 9½ hours in the registration of the FIR, coupled with the fact that the complainant had obtained a police letter for medical treatment of the injured yet did not promptly report the incident, weakens the completeness of the explanation advanced for such delay.
- ii) The injury, though firearm in nature and supported by medical record, is on a non-vital part of the body and has not been opined as life-threatening or *jaifah*.
- iii) There is no allegation of repeated firing by the applicant so as to unequivocally depict a settled and deliberate intention to commit *qatl-i-amd* of the complainant party, rendering the precise

applicability of Section 324 PPC to be a matter best left for determination by the trial Court after recording of evidence.

- iv) The present case appears to be a counter-blast to Crime No. 68 of 2025 under Section 324 PPC of P.S Ahmedpur, lodged by the applicant's side against the son and brother of the complainant, in which Habibullah, the cousin of applicant sustained a firearm injury on his chest; therefore, the possibility of false implication of the applicant in the instant case cannot, at this stage, be safely excluded.
- v) Despite a specific allegation of firearm use, no weapon has been recovered from the applicant and the investigation stands completed.
- vi) All the eyewitnesses are related and include injured witnesses, with no independent corroboration from the neighborhood presently forthcoming.
- vii) Though the prosecution alleges that the applicant has repeated the offence and refers to Crime No. 152 of 2025, the record of said case *prima facie* reflects his mere presence without any specific overt act, and he is already enjoying interim pre-arrest bail granted by the learned Additional Sessions Judge-III, Khairpur, as pointed out by learned counsel for the applicant in rebuttal.

7. At the stage of bail, mere specific nomination, though a relevant factor, is not conclusive where surrounding circumstances such as delayed FIR, apparent counter-blast to an earlier case against the complainant's side, non-recovery of the alleged weapon and the presence solely of related eyewitnesses, cast sufficient doubt to render the case one of further inquiry within the contemplation of Section 497(2) Cr.P.C. It is now well entrenched that bail is a rule and jail is an exception, and even where an offence ostensibly falls within the prohibitory clause, the Courts are not to treat such clause as an absolute bar; rather, they remain obliged to examine the nature and quality of the available material, the possibility of false implication and the need for deeper scrutiny at trial. The overall factual context indicates that the criminal law machinery is, at least *prima facie*, being employed as an instrument of pressure, thereby justifying the exercise of extraordinary jurisdiction under Section 498 Cr.P.C. Guidance in this regard is gleaned from *Jamaluddin & another v. The State* (2023 SCMR 1243), wherein it was held that where the complainant and injured witness receive injuries on non-vital parts of the body and the petitioners do not repeat the fire despite having ample opportunity, the question whether

Section 324 PPC is ultimately attracted is to be determined by the trial Court after recording evidence. Reliance is also placed on *Khalil Ahmed Soomro & others v. The State* (PLD 2017 SC 730), *Wajid Ali v. The State & another* (2017 SCMR 116), *Wahid Khan & another v. The State* (2025 MLD 938) and *Syed Zaman Shah & others v. The State* (2021 MLD 2106), wherein, *inter alia*, it has been enunciated that when the injuries do not squarely bring the matter within the prohibitory clause in cases alleging attempt to commit *qatl-i-amd*, the accused are entitled to the concession of bail on the ground of further inquiry.

8. In the light of the foregoing facts and circumstances, the applicant has succeeded in *prima facie* making out a case for the grant of bail on the touchstone of further inquiry. Consequently, the interim pre-arrest bail earlier granted to the applicant is hereby confirmed on the same terms and conditions. The applicant shall remain bound to appear before the trial Court and to attend and participate in the trial proceedings regularly, unless exempted in accordance with law.

J U D G E