

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. S-983 of 2025

Applicants : (1) Barkat Ali son of Mir Muhammad
(2) Moula Bux son of Muhammad Saleh
Syed Israr Ahmed Shah, Advocate for applicant/
accused Moula Bux

Cr. Bail Appln. No. S-1005 of 2025

Applicant : Qaloo Khan son of Abdul Razaq
Through Mr. Arif Ali Abbasi, Advocate

AND

Cr. Bail Appln. No. S-1097 of 2025

Applicants : 1) Shahid Khan @ Shahu s/o Khamiso Khan
2) Hazar Khan son of Shafi Muhammad
Through Mr. Rukhsar Ahmed Junejo, Advocate

Complainant : Zameer Ahmed s/o Illimuddin Chachar
Through Mr. Amanullah G. Malik, Advocate

The State : *Through Mr. Mansoor Ahmed Shaikh, DPG*

Date of hearing : 22.01.2026

Date of Short order : 22.01.2026

Reasons recorded on : 26.01.2026

ORDER

KHALID HUSSAIN SHAHANI, J.— Applicants Barkat Ali and Moula Bux @ Mulo are seeking pre-arrest bail in Cr. Bail Application No.S-983 of 2025. Similarly, applicant Qaloo Khan, is seeking pre-arrest bail in Cr. Bail Application No.S-1005 of 2025, while applicants Shahid Khan @ Shahu and Hazar Khan, are seeking post-arrest bail in Criminal Bail Application No.S-1097 of 2025, all in in a case bearing Crime No.58 of 2025 registered at Police Station Dubar, District Sukkur, for offences under Ss. 302, 148, 149 and 337-H(ii) PPC.

2. As per prosecution theory, there was an old dispute running between the complainant party and accused Naseer Ahmed Chachar and others due to which they were remaining annoyed and issuing threats to commit murder. On 02.09.2025, complainant along with his uncle Rab Dino @ Rab Nawaz, maternal uncle Arbab Ali and Abdullah, were returning from land to home, and it was about 7:00 p.m. when they reached near Jumo Goth date palms where they identified and saw the accused, namely (1) Farooq Ahmed, empty handed, (2)

Moula Bux @ Moolo armed with KK, (3) Naseer Ahmed armed with gun, (4) Hazaro Khan armed with pistol, (5) Shahid Khan @ Saju armed with KK, (6) Kaloo Khan armed with gun, and two unidentified persons armed with pistols who, if seen again, would be identified, all of whom came in front of the complainant party. It is further alleged that the accused Farooq instigated the other accused persons to shoot straight fires upon Rab Dino @ Rab Nawaz and commit his murder because he had filed case against them, and on his instigation, before the sight of complainant and witnesses, accused Naseer Ahmed shot straight fire of gun with intention to commit murder upon uncle Rab Dino @ Rab Nawaz which hit him on right side chest, whereupon he raised cries and fell down and blood was oozing, and then other accused made aerial firing and chanted slogans and went away towards Jumo Goth. Thereafter, complainant arranged conveyance and rushed injured uncle Rab Dino @ Rab Nawaz and proceeded towards Taluka Hospital Rohri, but on their way or on seeing by them, the injured succumbed to the injuries and died, and such information was conveyed to Police Station Dubar whose staff came to Police Station Rohri and, after completion of legal formalities, the post-mortem was conducted from Civil Hospital Rohri, and the dead body was handed over for funeral, whereupon the dead body was left under supervision of witnesses and thereafter complainant appeared at the police station and lodged the FIR, attributing the straight fire causing murder to accused Naseer Ahmed on instigation of Farooq, and aerial firing and slogans by the other co-accused.

3. Mr. Rukhsar Junejo, learned counsel for applicants Shahid Khan @ Shahu and Hazar Khan, has submitted that the alleged incident took place on 02.09.2025 at about 7:00 p.m. and the FIR was lodged on 03.09.2025 at about 0815 hours, showing a delay of thirteen hours, which delay has not been satisfactorily explained by the complainant despite the distance between the place of occurrence and the police station being merely 4/5 kilometers. He argued that the applicants Shahid Khan @ Shahu and Hazar Khan are in custody, whereas

applicants Moula Bux and Barkat Ali are on interim pre-arrest bail, and that only one empty cartridge was recovered from the place of occurrence, which fact belies the prosecution case of indiscriminate firing by multiple accused persons. He further submitted that the police, during investigation, found co-accused Farooq Kaloo in Column No.II, and thereafter the learned Additional Sessions Judge-III, Sukkur, granted pre-arrest bail to co-accused Ghulam Farooq vide order dated 10.09.2025, who was assigned the role of instigation. Learned counsel argued that the role attributed to the present applicants is only that of aerial firing and no specific overt act is assigned to them in causing any injury to the deceased, and that no such empty cartridge or weapon was recovered from any of the applicants to substantiate the allegation of aerial firing. He further contended that the post-mortem report reveals presence of blackening and charring on the injuries, which indicates close-range firing, yet the prosecution case does not satisfactorily explain the exact distance and circumstances of firing. He relied upon the judgment reported as (2006 MLD 1958) on the legal aspect of aerial firing and its implications in determining common object and vicarious liability, the judgment reported as (2006 P.Cr.L.J 1611) regarding further inquiry in bail matters, and the judgment reported as (SBLR 2017 Sindh 424) pertaining to bail in cases where role is confined to aerial firing with no direct injury attributed to the accused. Learned counsel prayed that in view of the settled legal position and the facts of the case, the applicants may be granted post-arrest bail.

4. Mr. Ajeebullah Junejo, learned counsel representing applicants Barkat Ali and Moula Bux, submitted that applicant Barkat Ali is not named in the FIR at all, and there is no description whatsoever of Barkat Ali in the FIR. He argued that the statement of complainant under Section 162 Cr.P.C was recorded on 03.09.2025, and the statements of Arbab Ali and Abdullah under Section 161 Cr.P.C were also recorded on 03.09.2025, wherein for the first time the names of Barkat Ali and Shoukat were implicated along with allegation of aerial firing. He further submitted that co-accused Ghulam Farooq was granted pre-arrest bail by

the Court of Additional Sessions Judge-III, Sukkur, and was placed in Column No.II, and therefore on the principle of consistency the present applicants, whose role is even less than that of Ghulam Farooq, are also entitled to the concession of bail. He relied upon the judgment reported as (1986 SCMR 1380) on the question of consistency and parity in grant of bail.

5. Syed Israr Ahmed Shah, learned counsel, representing applicant Moula Bux, submitted that no overt act is available on record against applicant Moula Bux, and that although he is named in the FIR as being armed with KK, there is no allegation that he fired any shot or caused any injury to the deceased or any other person, and the only role, if any, attributed to him in the statements is that of aerial firing after the main occurrence had already taken place. He argued that the case of the applicant requires further inquiry under Section 497(2) of the Code of Criminal Procedure, and that his continued detention in such circumstances would amount to pre-trial punishment.

6. Per contra, learned counsel Mr. Malik Amanullah, representing the complainant, opposed the bail applications and submitted that the offence is of brutal murder of an innocent person by an unlawful assembly comprising armed assailants, and that the occurrence took place in a pre-planned manner with common object to commit murder of the deceased Rab Dino @ Rab Nawaz. He argued that the presence and participation of all the accused at the place of occurrence is established by the ocular testimony of eye-witnesses who are consistent and have been examined during investigation, and that the medical evidence, namely the post-mortem report, fully supports the prosecution case. Learned counsel contended that aerial firing cannot be viewed in isolation and that it was part of the concerted action of the unlawful assembly aimed at creating terror, ensuring that no one could come to the rescue of the deceased or resist the attack, and thereby facilitating commission of the murder by accused Naseer Ahmed. He relied upon the judgment reported as (2013 YLR 968) wherein it has been held that making aerial shots is in fact to facilitate commission of the main

offence and therefore cannot be taken in isolation, and the judgment reported as 2023 SCMR 975(b) regarding vicarious liability of members of unlawful assembly under Sections 148 and 149 of the PPC. Learned counsel prayed that in view of the heinous nature of the offence and the clear role assigned to the applicants, the bail applications may be dismissed.

7. Mr. Mansoor Ahmed Shaikh, Learned Deputy Prosecutor General, representing the State, supported the contentions of learned counsel for complainant and opposed the bail applications. He submitted that the investigation is complete, challan has been submitted, and the prosecution has sufficient evidence to connect the applicants with the commission of the offence, and that they do not deserve the concession of bail either before or after arrest. He prayed for dismissal of the bail applications.

8. Arguments heard. Record perused. The material available on record has been carefully examined. The matter requires determination of the question whether the applicants have made out a case for grant of pre-arrest or post-arrest bail as the case may be, particularly in the context of the role attributed to them, the evidence available on record, and the principles governing grant of bail in cases involving offences punishable under Section 302 r/w 148 and 149 of the PPC.

9. From a perusal of the FIR and the statements recorded during investigation, it appears that the main and fatal injury to the deceased is specifically and consistently attributed to accused Naseer Ahmed, who is alleged to have fired a straight shot with gun hitting the deceased on right side of chest, which proved fatal. The role attributed to co-accused Farooq Ahmed is that of instigation, and he is stated to have been empty handed at the time of occurrence. As regards the present applicants, namely Barkat Ali, Moula Bux, Qaloo Khan, Shahid Khan @ Shahu and Hazar Khan, the consistent allegation in the FIR as well as in the statements is that they made aerial firing and raised slogans after the fatal shot had already been fired by accused Naseer Ahmed, and no specific

injury, whether simple or grievous, is attributed to any of these applicants. The medical evidence, namely the post-mortem report, discloses only one firearm injury on the body of the deceased, and no other injury is shown to have been caused to any other person during the occurrence. Only one empty cartridge is stated to have been recovered from the place of occurrence, and no weapon or incriminating article has been recovered from any of the present applicants. During the course of investigation, co-accused Ghulam Farooq @ Farooq Ahmed, who was assigned the role of instigation, was placed in Column No.II of the police report, and he was granted pre-arrest bail by the trial court vide order dated 10.09.2025.

10. The contention of learned counsel for the applicants that applicant Barkat Ali is not named in the FIR and his name surfaced for the first time in the statements recorded under Sections 161 and 162 Cr.P.C on 03.09.2025, appears to be borne out from the record. The FIR mentions six named accused and two unidentified persons, and the name of Barkat Ali does not appear in the FIR. His implication at a subsequent stage, that too by interested witnesses who are close relatives of the complainant, does raise a doubt about the veracity of his involvement, and this aspect requires further inquiry at trial. Similarly, as regards the other applicants who are named in the FIR, their assigned role is confined to aerial firing with no attribution of any specific injury, and this role, when considered in the context of recovery of only one empty cartridge, the medical evidence showing only one fatal injury, and the grant of bail to co-accused Farooq who was assigned the role of instigation, creates a situation where the exact nature and extent of their participation and their vicarious liability under Sections 148 and 149 of the PPC requires further inquiry at the trial stage.

11. The contention of learned counsel for complainant that aerial firing is part of the concerted action and facilitates commission of the main offence is a legal proposition which has support from precedents including the judgment cited by him, but it is equally well settled that each case must be decided on its

own facts and circumstances, and where the role of the accused is disputed, where there is no recovery of weapon from the accused, where co-accused with similar or more serious role have been granted bail, and where the medical and other evidence does not unequivocally establish the participation of the accused in the manner alleged, the case falls within the ambit of further inquiry as contemplated by Section 497(2) of the Code of Criminal Procedure. The judgments relied upon by learned counsel for applicants, including *Darya Khan v. The State* (2006 MLD 1958), *Waryam Khan v. The State* (2006 P.Cr.L.J 1611), (SBLR 2017 Sindh 424) and *Muhammad Ramzan v. Zafar Ullah* (1986 SCMR 1380), support the proposition that where the role is confined to aerial firing, where no direct injury is caused by the accused, and where there are circumstances creating doubt about the exact nature of participation, bail may be granted on the ground of further inquiry.

12. The delay in lodging of the FIR is another aspect which has been highlighted by learned counsel for applicants. The occurrence is stated to have taken place on 02.09.2025 at about 7:00 p.m, and the FIR was lodged on 03.09.2025 at about 0815 hours, showing a delay of thirteen hours. While the prosecution contends that the time was consumed in shifting the injured to hospital, completion of medico-legal formalities and funeral arrangements, the fact remains that the place of occurrence is only 4/5 kilometers away from the police station, and the delay of thirteen hours in lodging the FIR does give rise to a doubt about whether there was deliberation and consultation before lodging the report. The admitted enmity between the parties, which is mentioned in the FIR itself, and the fact that all the witnesses are close relatives of the complainant and deceased, are factors which, while not fatal to the prosecution case, do lend support to the argument that the matter requires further probe at trial and that at this stage, the case is one of further inquiry.

13. As regards the question of consistency and parity, it is a matter of record that co-accused Ghulam Farooq, who was assigned the role of instigation

and was stated to be empty handed, has been granted pre-arrest bail by the trial court and placed in Column No.II. While it is true that each accused must be considered on the basis of his own role and the evidence against him, and that the principle of consistency is not an absolute rule, nevertheless in the facts and circumstances of the present case, where the applicants are assigned only the role of aerial firing with no attribution of any injury and with no recovery of weapon from them, and where the co-accused with the role of instigation has been granted bail, denial of bail to the present applicants would amount to discriminatory treatment and would not be in consonance with the settled principles governing grant of bail.

14. In so far as the question of pre-arrest bail is concerned, it is well settled that such relief is extraordinary in nature and is to be granted only where there is mala fide or likelihood of abuse of process of law, but in the present case, applicants Barkat Ali, Moula Bux and Qaloo Khan have been on interim pre-arrest bail for a considerable period, they have not been shown to have misused the concession or avoided investigation or trial, the investigation is complete and challan has been submitted, and there is no specific instance of non-cooperation on their part. In these circumstances, confirmation of their interim pre-arrest bail would not only be in consonance with the law but would also serve the ends of justice. Similarly, as regards applicants Shahid Khan @ Shahu and Hazar Khan who are seeking post-arrest bail, they are admittedly in custody, the investigation is complete, challan has been submitted, they are no more required for custodial interrogation, and there is no material on record to suggest that they have any previous criminal record or that there is any likelihood of their absconding or tampering with evidence, particularly when the witnesses are close relatives of complainant and the case is based on ocular testimony. Continued incarceration of these applicants, whose precise criminal liability is yet to be determined at trial and whose assigned role does not include causing the fatal injury, would amount to punishment before conviction, which is not the object of pre-trial detention.

15. Having regard to the entire facts and circumstances of the case, the nature of allegations, the role attributed to the applicants, the evidence available on record, the grant of bail to co-accused Farooq, the placement of accused in Column No.II, the delay in lodging of FIR, the interested nature of witnesses, the absence of recovery from the applicants, the medical evidence showing only one injury, the recovery of only one empty cartridge, and the settled principles of law governing grant of bail particularly in cases falling within the ambit of Section 497(2) of the Code of Criminal Procedure, this Court is of the considered view that the applicants have succeeded in making out a case for grant of bail on the ground of further inquiry into their guilt.

16. Accordingly, the interim pre-arrest bail earlier granted to applicants Barkat Ali and Moula Bux in Cr. B.A No. S-983 of 2025 and to applicant Qaloo Khan in Cr. B.A No. S-1005 of 2025, is/was confirmed on the same terms and conditions. Cr. B.A No. S-1097 of 2025 filed on behalf of applicants Shahid Khan @ Shahu and Hazar Khan, in the same crime, is/was allowed. Applicants Shahid Khan @ Shahu and Hazar Khan are/were admitted to post-arrest bail subject to their furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand only) each and personal recognizance bonds in the like amount to the satisfaction of the trial court vide short order dated 22.01.2026 with directions that the applicants shall remain bound to appear before the trial court regularly and to attend and participate in the trial proceedings unless exempted in accordance with law with clarification that the observations made herein are purely tentative in nature and have been recorded only for the purpose of deciding the present bail applications, and they shall not prejudice the case of either party nor shall they influence the learned trial court in any manner whatsoever, which shall proceed to decide the matter strictly on the basis of evidence produced before it and in accordance with law. These are detailed reasons thereof.

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