

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. S-298 of 2024

Applicant : Umair Ali S/o Zameer Hussain, Phulpoto
Through Mr. Irshad Hussain Dharejo, Advocate

Complainant : Abid Hussain S/o Khan Muhammad, Phulpoto
Through Mr. Habib-ur-Rehman Shaikh, Advocate

The State : Through Mr. Khalil Ahmed Maitlo, DPG

Date of hearing : 23.01.2026
Date of order : 29.01.2026

ORDER

KHALID HUSSAIN SHAHANI, J.– The present criminal bail application has been filed by applicant Umair Ali Phulpoto, seeking post-arrest bail in a case bearing crime No.349/2023, for offences under Sections 302, 114, 337-A(i), 337-F(i), 147, 148, 149 & 504 PPC, registered at Police Station B-Section, District Khairpur. Notably, the applicant's bail plea was previously rejected by the learned Additional Sessions Judge-II, Khairpur, by order dated 30.03.2024.

2. The case arises from an incident on 09.10.2023 wherein the applicant allegedly struck Khadim Hussain with a hatchet on the head, causing his death. The applicant was the only person armed with a hatchet among eight accused. The First Information Report, lodged at 1230 hours on the same day, specifically names the applicant as the person who delivered the fatal blow with intent to murder. The complainant's version is corroborated by two eyewitnesses, namely Aijaz Ahmed and Abdul Rasheed, who were present at the scene. Medical evidence in the form of the postmortem report supports that death occurred due to head injury. The hatchet allegedly used in the commission of the offence has been recovered and sent for chemical examination.

3. Contentions of the learned advocate for applicant is that applicant's case not differs fundamentally from his seven co-accused, all of whom have been granted bail. The trial court, in its bail rejection order dated 30.03.2024, expressly found that while co-accused Akhtiar Ahmed, Imran, Fayaz Ahmed, Kamran, Rabnawaz, Aamir Ali, and Haq Nawaz caused non-fatal lathi blows,

the specific and active role of inflicting the fatal injury was attributed solely to the applicant. This distinction justifies different treatment and negates the application of the rule of consistency. The applicant submits that the case is one of counter-version and further inquiry. A counter-FIR (Crime No. 355/2023) was filed by the accused party alleging that the complainant party attacked them first. However, the counter-FIR was lodged on 11.10.2023 at 1250 hours, more than 28 hours after the incident, despite the accused party obtaining medical treatment on the day of occurrence. This unexplained delay casts doubt on the bona fides of the counter-version.

4. Learned DPG for the State strongly opposed the contentions of the learned advocate for applicant.

5. On tentative assessment, the prosecution version appears more credible. The injury pattern, one death on the complainant's side and non-fatal injuries on the accused's side, is more consistent with the prosecution case. The Supreme Court in case of *Muhammad Rafique v. The State* (PLD 2022 SC 694) held that mere existence of a cross-version does not automatically constitute further inquiry; courts must assess the credibility of the counter-version. In the present case, tentative assessment favors the prosecution.

6. The applicant further contends that a 4.5-hour delay in FIR registration suggests fabrication. However, this delay is explained by the necessity of transporting the deceased and injured to the police station, obtaining a postmortem letter, conducting the postmortem examination, and then lodging the FIR. The police proceedings column in the FIR itself records that upon arrival of the complainant, there was no delay. This is reasonable time and does not attract suspicion.

7. The Supreme Court's pronouncements in case of *Muhammad Atif v. State* (2024 SCMR 1071) establish that the rule of consistency requires the accused to show that he and his co-accused are similarly placed in similar circumstances. The benchmark is not merely the FIR role but the entire material

collected by the police. Here, the applicant assigned a specific and fatal role, while co-accused caused non-fatal injuries. This substantial difference precludes consistency.

8. Section 302 PPC falls within the prohibitory clause of Section 497(1) Cr.P.C. Bail in such offences is granted sparingly and only under exceptional circumstances. The applicant has not demonstrated any such exceptional circumstance. The case does not fall within further inquiry under Section 497(2) because *prima facie* sufficient material connects the applicant to the commission of the offence.

9. The trial court's order dismissing bail is well-reasoned and in accordance with law. On tentative assessment of the material, the applicant appears to be *prima facie* connected with the commission of the offence. The prosecution has adduced sufficient evidence through the FIR designation, eyewitness corroboration, medical evidence, and weapon recovery. No exceptional circumstance exists to warrant bail in a prohibitory clause offence.

10. The bail application lacks merit and is hereby dismissed. The applicant shall remain in custody to face trial before the competent court. The trial court is directed to proceed expeditiously with the trial. The observations herein are tentative and made solely for purposes of this bail order and shall not influence the trial court in its determination of the case on merits. The trial court shall decide the case on the evidence led before it without being influenced by this order, preferably within 03 months.

J U D G E