HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Bail Application No.S-1530 of 2025.

*[Muhammad Bux & another **Vs.** The State]*

Applicants	:	Muhammad Bux and another **through** Mr. Noor-ul-Haq Qureshi, Advocate.
Complainant	:	Aalam **through** M/s Ayaz Hussain Tunio and Imran Ali Tunio, Advocates.
Respondent	:	The State **through** Ms. Rameshan Oad, Deputy Prosecutor General, Sindh.
Date of Hearing	:	18.05.2026.
Date of Decision	:	18.05.2026.

O R D E R

Syed Fiaz ul Hassan Shah, J :- The Applicants above-named seek post-arrest Bail in F.I.R No.179/2025, registered at Police Station Husri/Pabban, District Hyderabad for offence punishable under Section 302, 324, 504, 114, 337A(i), 337F(i), 34-PPC. The Applicants bail application was rejected by the learned 4th Additional Sessions Judge/MCTC-II, Hyderabad vide Order dated 21.11.2025.

2. The applicants are booked in crime No.179 of 2025 registered with police station Husri/Pabban, Hyderabad on the allegation that on 11.06.2025 at about 1100 hours, the applicants alongwith arrested accused Dadan @ Dadu and Mehboob Lund armed with *lathies* and hatchets alighted from two motorcycles and at the instigation of present Applicant No.1 (Muhammad Bux), Mehboob Lund attacked with hatchet to the uncle of the complainant (Waheed Ali), who was badly injured, while the present Applicant No.2 (Ameer Ali) hit the hatchet blow to the complainant and caused a forehead injury. Later, Waheed Ali succumbed to his

injuries and died and subsequently Section 302 and 34-PPC were added, challan was filed and charge has been framed and at present, matter is ripe for prosecution evidence.

3. Learned counsel for the applicants/accused contended that as per the contents of the FIR, two injuries were caused, one to deceased victim Waheed Ali allegedly from the hands of Mehboob Lund, while second and last injury allegedly caused by the present applicant No.2 Ameer Ali, which hit at the forehead as per the case of prosecution. Further contends that mashirnama of injuries available at page No.117 confirms that the accused party hit only twice, one caused to the deceased victim Waheed Ali and other caused to the complainant Alam Ali, however, there is significant variations in the medical examination of complainant Alam as the interim medical report states that *"(1) Linear incised wound size: 3 cm x 0.2 cm above Right Size bridge of Nose. Skin Deep. (2) Linear incised wound size 3.5 cm x 0.2 cm at Cheek Right. Skin Deep"* as well as in the final medical report, Doctor opined *"(1) Un displaced fracture of nasal bone (2) Skin deep at Right Cheek. All above injuries would be declared as accordingly in kind of hurts".* Therefore, as per the medical record and verbatim of the complainant, two versions case has been surfaced out for the purpose of deciding the present Bail Application. He further contends that even otherwise, it is the case of the prosecution that applicant No.1 Muhammad Bux was empty handed and there is absolutely missing element as admittedly, it is the case of prosecution that Applicant No.1 Muhammad Bux was without any weapon and was neither holding any lathi nor hatchet and has only assigned a role of instigation that he had instigated Mehboob Lund, who hit the hatchet blow to the deceased victim. Learned counsel relied upon the case of **Saeed Ahmed and another Vs The State** (PLD 2024 SC 1241) and

Kamran Vs Kamran Malik and another (2020 SCMR 1814), wherein the bail was allowed by the Honourable Supreme Court in Homicide case role instigation was contained as one of the instigator with the wisdom that instead of taking any initiative, he preferred to persuade, Mehboob Lund. He further relied upon case of **Awal Khan and 7 others VS The State through AG-KPK and another** (2017 SCMR 538) that contradiction between the ocular account and the medical evidence makes the case of the further inquiry eligible to the applicant for grant of concession of Bail.

4. On the other hand, learned counsel for complainant firstly argued that initially, the applicants were granted interim pre-arrest bail on 14.06.2025, which was withdrawn on 20.06.2025 and subsequently Bail Application was filed and at paragraph No.13 a plea of *alibi* was taken that the applicant No.2 Ameer Ali is a Security Guard in OGDCL and at the time of commission of offence, he was performing his duties at Tando Alam Mari Logistic (Oil field), while the defence witness Aijaz presented during course of the investigation has stated that they all were available at Otaq of Ameer Ali. He further drew attention towards the statement of a defence witness Aijaz Ali produced during investigation that he has admitted that they heard hue and cries from nearby place of incident (crime scene) and it was the day of 10.06.2025 / 13th Dhul-Hijjah. Per Mr. Tunio that might be statement for the previous day as a date of commission of offence was 11.06.2025 and correspondingly it was 14th Dhul-Hijjah. He relied upon the case law of **Allah Dewayo Shahani Vs The State** (2023 SCMR 1724) and urged that offence is committed with the common object.

5. Learned Deputy Prosecutor General has contended that there is consistency in the ocular and medical evidence and the contentions of the learned counsel for the applicants that there is a

variation in the medical report is not sufficient to enlarge the applicants on bail. It is settled laws that any PW did not disclosed exact nature of injuries and it can only be determined by a health care professional (Doctor) expert.

6. In rebuttal, Mr. Qureshi argued that a further statement of complainant was recorded on 12.06.2025, and he again repeated in his further statement that injury was caused at forehead and in the medical record injuries were caused at two difference places on the face. Secondly, the considerable delay in registration of FIR support the applicants as the FIR was registered after 38 hours and aspect of consultation cannot be ruled out.

7. Heard learned counsel for parties and perused the record with their assistance.

8. The contention of the learned counsel for the applicants that the FIR and Mashirnama initially reflected one injury each to the complainant and the deceased, whereas the interim and final medico-legal certificates issued by the Police Surgeon reveal two injuries on the forehead of the complainant, such alleged contradiction between ocular account and medical record does not persuade this Court at the stage of bail. It cannot be conclusively determined at this stage whether the injuries sustained by the complainant were the result of a single stroke of the hatchet, which moved across and affected adjoining parts of the face and forehead, or whether they were caused by more than one stroke resulting in multiple injuries. Such determination lies exclusively within the domain of the medical expert, who alone can opine on the nature, extent, and cause of injuries. Any variation between the initial memorandum of injuries and the subsequent medico-legal certificates must therefore be clarified when the doctor steps into

the witness box, subject to cross-examination by the defence. This Court cannot embark upon deeper appreciation of medical evidence, as such exercise is reserved for the trial Court after recording of evidence. It is a settled principle of law that neither the police nor any prosecution witness can determine the nature, cause, or detail of an injury, which falls exclusively within the domain of the medical expert. Accordingly, the alleged contradiction between ocular account and medical record does not create a ground for bail at this juncture.

9. Therefore, the reliance placed on *Awal Khan (supra)* is misplaced, as that case involved firearm injuries with a single inlet and exit wound, whereas the present matter concerns injuries inflicted with a hatchet, which are inherently more complex in determination, particularly when directed at the face. Hence, the present case cannot be termed a "two-version case" merely due to variation between initial narration of one injury and subsequent medical declaration of two injuries

10. The next contentions learned Counsel for the applicants has raised the plea of alibi, asserting their absence from the place of occurrence at the relevant time on the basis of CDR analysis that was appreciated by the Investigation Officer during investigation is also misconceived. It is settled law that the plea of alibi is a rule of evidence, available only to the accused as a defence plea, and not to be conclusively determined by the Investigating Officer or Prosecutor during investigation or pre-trial scrutiny. Reliance is placed on ***Muhammad Yaqoob v. State*** **(PLJ 1982 Cr. 343) and** ***Muhammad Aslam v. State*** **(1997 PCr.LJ 1689)**, wherein it was held that such plea requires strict proof and judicial scrutiny at ***trial***.

11. The burden of establishing alibi initially lies upon the accused and must demonstrate reasonable possibility of absence from the crime scene, as recognized in ***Muhammad Hanif v. State*** **(2000 SCMR 1806) and** ***State v. Saif-ur-Badshah*** **(1990 PCr.LJ 1669 DB)**. Once such evidence is produced, the onus shifts to the prosecution to rebut it through cogent evidence and cross-examination, as held in ***Muksad Molla v. The Crown*** **(PLD 1957 Dacca 503)** but cannot form basis at bail stage.

12. Furthermore, to allow the Investigating Officer to conclusively determine alibi at the investigation stage would undermine the criminal justice system and collapse cases of heinous nature owing to substandard investigation.

13. The third contention advanced by the learned counsel for the applicants is that nothing has been recovered from their possession or custody. This argument carries no weight. It is an admitted position that the present applicants were initially enlarged on pre-arrest bail, whereas the co-accused Dadan @ Dadu and Mehboob Ali Lund were arrested during investigation. The recovery of the crime weapon was effected from the possession of the arrested co-accused, and naturally, no recovery could be made from the applicants who had already secured pre-arrest bail and were not taken into custody. The mere absence of recovery from the applicants does not exonerate them or diminish the prosecution case at this stage, particularly when they stand directly nominated in the FIR and implicated through ocular account supported by medical evidence and recovery of weapon from their co-accused.

14. Lastly learned counsel for the applicants contends that final medical report states that Complainant sustained nasal fracture

bone from the hatchet inflicted by the Applicant No.2 Ameer Ali and there was no other allegations against him and under the law such injury is an offence which is punishable under Section 337-F(iv) PPC and sentence provided is 10 years which make the case of the Applicant No.2 (Ameer Ali) as one outside the limb of Prohibitory clause of Section 497 Cr.P.C and therefore Applicant No.2 (Ameer Ali) is entitle for bail.

15. And the case of Applicant No.1 Mohammad Bux is neither for commission of murder nor for injury. As per the FIR mere his presence was shown and no role had attributed to him except that he had instigated. He further states that in the identical nature of offence, the Hon'ble Supreme Court of Pakistan in *Kamran case (supra)* hold that the accused instigated his father, otherwise authoritatively placed on the parent parental rung. He preferred to persuade his father for the misadventure.

16. Careful examination of the FIR reveals that the complainant Alam Ali is both a natural witness and the injured victim of the incident. At the time of occurrence, he was accompanying his uncle Waheed Ali when the accused party attacked them. During the commission of offence, two more witnesses, Kaloo Khan and Azeem Khan, arrived at the crime scene and assisted the complainant and the deceased in proceeding towards the hospital for emergency treatment. The ocular account directly nominates the accused, including the present applicants, in the FIR, corroborated by their statements recorded under section 161 Cr.P.C. and further supported by the post-mortem report, medical record, and recovery of the crime weapon.

17. The maximum punishment provided for the offence is death or life imprisonment, which squarely brings the case within the

ambit of Section 497 Cr.P.C. as one of the prohibitory clauses. It is a settled principle of law that bail in cases falling under the prohibitory clause cannot be granted unless reasonable grounds exist to believe that the accused is not guilty of the offence alleged.

18. In my considered view, the element of common intention in the present case appeared arising out of a prior altercation between the parties regarding distribution of water from the watercourse, a dispute rooted in their status as co-villagers with competing agricultural interests. Although reliance was placed on the dictum of the Hon'ble Supreme Court in *Kamran (supra)*, where bail was granted on the reasoning that the accused merely instigated his father rather than taking the deadly initiative himself, the facts of the present case are distinguishable.

19. Conversely, the record reflects serious prior altercations culminating in the present episode of murder, which attract the ingredients of Section 149 PPC. The offence was committed in a manner where the accused intentionally gathered and, being members of an unlawful assembly, executed the common object of causing murder despite the fact that Applicant No.1 was not assigned role or Applicant No.2 caused injury only. In law, every member of such assembly is guilty of the offence committed in pursuit of that object.

20. Consequently, irrespective of the fact that no recovery has been affected from applicant Muhammad Bux, and even if his role is confined to instigation linked to the earlier altercation, the record demonstrates that the murder was committed with common object and shared knowledge. The applicants cannot wriggle out of this situation by relying on absence of recovery or minimization of their role or alibi or even variation in earlier reported injury and medical

report. These factors collectively strengthen the prosecution case at this stage and provide sufficient material connecting the applicants with the commission of offence.

21. In view of the foregoing reasons, the applicants have failed to make out a case for grant of bail. The bail application is therefore **dismissed**.

22. It is expressly clarified that the observations made or recorded in this order are strictly limited to the disposal of the present bail application and do not constitute an opinion on the merits of the case. The trial Court shall adjudicate the matter independently, uninfluenced by any findings articulated herein, and solely based on evidence adduced.

J U D G E

Ali.