

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No.3487 of 2025

Criminal Bail Application No.3488 of 2025

Applicants : Nabi Bux @ Naban & Allah Bux @ Papu through Mr. Shabir Ahmed Kumbhar, Advocate in both cases.

Complainant : Mohammad Ibrahim through Mr. Faisal Ahmed, Advocate.

Respondent : The State Through Mr. Mohammad Noonari, D.P.G.

Date of hearing : 30.03.2026.

Date of order : 25.05.2026

ORDER

TASNEEM SULTANA-J.:- Through this common order, I intend to dispose of Criminal Bail Application No.3487 of 2025 filed by applicant Nabi Bux Khushk @ Naban and Criminal Bail Application No.3488 of 2025 filed by applicant Allah Bux @ Papu, arising out of same FIR vide Crime No.201 of 2025 registered at Police Station Makli, District Thatta, for offences punishable under Sections 302, 337-H(2), 114 and 34 PPC. Their earlier Criminal Bail Applications No.1179 and 1180 of 2025 having been dismissed by learned Additional Sessions Judge-I/Model Criminal Trial Court, Thatta, the applicants have approached this Court through the instant applications seeking the same concession.

2. Brief facts of the prosecution case are that on 03.03.2025 at about 12:10 a.m., the complainant Muhammad Ibrahim along with his son deceased Ayaz Ali was present at their shops situated at Makli for closing the same when the applicants Allah Bux alias Papu and Nabi Bux alias Naban, along with co-accused Ahmad Nawaz, allegedly arrived there on a motorcycle while armed with weapons. It is alleged that applicant Allah Bux alias Papu questioned the deceased as to why his shop was open at that hour and, upon exchange of hot words, allegedly instigated co-accused Ahmad Nawaz by exhorting him to make firing, whereafter co-accused Ahmad Nawaz allegedly made straight firing with Kalashnikov upon the deceased, causing firearm injuries on his left forearm and right side of neck. It is further alleged that during the occurrence applicant Nabi Bux alias Naban resorted to aerial firing. Consequently, the injured Ayaz Ali was shifted to Makli Hospital where he

succumbed to the injuries, whereafter the present F.I.R. came to be lodged against the accused persons.

3. Learned counsel for the applicants argued that the applicants are innocent and have falsely been implicated in the present case with mala fide intention; that delay in lodging of the F.I.R. reflects deliberation and consultation; that direct fatal injury has not been attributed to the present applicants inasmuch as applicant Nabi Bux alias Naban has only been assigned the role of aerial firing whereas applicant Allah Bux alias Papu has merely been attributed the role of instigation, while co-accused Ahmad Nawaz has been assigned the effective role of causing firearm injuries to the deceased; that material contradictions exist between the ocular account and medical evidence regarding the seat and nature of injuries sustained by the deceased; that delayed recovery of crime empties and non-matching of empties with the weapon allegedly recovered from applicant Nabi Bux alias Naban creates serious doubt in the prosecution story; that motive has not been assigned to the applicants in the F.I.R.; that the question whether the applicants shared common intention with co-accused or not is a matter of further inquiry within the contemplation of Section 497(2), Cr.P.C.; and that investigation has already been completed, therefore, further incarceration of the applicants would serve no useful purpose. In support of his contentions, learned counsel for the applicants placed reliance upon ***Muhammad Ameen v. The State (2022 SCMR 1444)***, ***Ataullah and others v. The State (1999 SCMR 1320)***, ***Nisar Ahmed v. The State (2014 SCMR 27)***, ***Sajid Hussain alias Joji v. The State (PLD 2021 Supreme Court 898)***, ***Sarwar v. The State (1991 SCMR 289)***, ***Mst. Maria Khan v. The State (2013 SCMR 49)*** and ***Saeed Khan v. The State (2011 SCMR 1392)***.

4. Conversely, learned D.P.G., assisted by learned counsel for the complainant, contended that both the applicants are specifically nominated in the F.I.R. with active roles; that applicant Allah Bux alias Papu allegedly instigated co-accused Ahmad Nawaz immediately before the occurrence whereas applicant Nabi Bux alias Naban remained present at the place of incident armed with pistol and resorted to aerial firing; that the applicants were known to the complainant party and were nominated promptly in the F.I.R.; that the ocular account furnished by the complainant party finds support from the medical evidence; that sufficient incriminating material is available on record reasonably connecting the applicants with commission of the alleged offence in furtherance of their common intention with co-accused; therefore, the applicants do not deserve concession of bail.

5. I have heard learned counsel for the applicants, learned D.P.G. for the State as well as learned counsel for the complainant and perused the material available on record with their able assistance.

6. Perusal of the record reflects that both the applicants are specifically nominated in the F.I.R. with active and participatory roles. Applicant Allah Bux alias Papu has been attributed the role of instigation immediately before the occurrence whereas applicant Nabi Bux alias Naban allegedly remained present at the place of incident while armed with pistol and resorted to aerial firing. The applicants were admittedly known to the complainant party prior to the occurrence and have been nominated promptly in the F.I.R. Prima facie, the ocular account furnished by the complainant and eyewitnesses finds support from the medical evidence to the extent that deceased Ayaz Ali sustained firearm injuries and succumbed thereto.

7. The contention of learned counsel for the applicants that direct fatal injury has not been attributed to the present applicants, by itself, is not sufficient to bring the case within the ambit of further inquiry. The allegations levelled against the applicants cannot be examined in isolation from the overall prosecution case. Prima facie, the material available on record suggests participation of both the applicants in the occurrence allegedly committed in furtherance of common intention shared with co-accused. In the case of ***Ibrahim v. The State (2012 YLR 983 Sindh)***, it was observed that where an accused is specifically nominated in the F.I.R. with an assigned role and no plausible explanation is available regarding his presence at the place of occurrence, reasonable grounds exist to believe that such accused shared common intention with co-accused in commission of the offence and the case does not fall within the purview of further inquiry.

8. Likewise, in the case of ***Sarwari v. The State (1991 SCMR 289)***, the Hon'ble Supreme Court declined bail where a specific role of instigation was attributed to the accused and held that prima facie such case could not be treated as one of further inquiry. In the present case also, applicant Allah Bux alias Papu has specifically been attributed the role of instigation whereas applicant Nabi Bux alias Naban allegedly remained present at the place of occurrence armed with pistol and resorted to aerial firing. Their alleged participation in the occurrence, prima facie, cannot be examined in isolation from the overall prosecution case merely on the ground that no direct fatal injury has been attributed to them. Therefore, at this stage, it cannot prima

facie be concluded that the applicants had no nexus with the commission of the alleged offence.

9. The Hon'ble Supreme Court in the case of ***Mohsin Ali v. The State (2016 SCMR 1529)*** has further held that where the accused is specifically nominated in the F.I.R., the ocular account is supported by medical evidence and prima facie material exists connecting the accused with commission of offence, the case would not fall within the ambit of section 497(2), Cr.P.C. notwithstanding the plea that the accused had not caused the fatal injury himself. It was further observed that deeper appreciation of evidence at bail stage is not permissible and only a tentative assessment of the material can be undertaken. Similarly, in ***Muhammad Atif v. The State (2024 SCMR 1071)***, it was observed that where sufficient incriminating material is available on record connecting the accused with commission of offence, concession of bail cannot be extended merely on the basis of pleas requiring deeper appreciation of evidence.

10. 10. So far as the case-law relied upon by learned counsel for the applicants is concerned, the same is distinguishable from the facts and circumstances of the present case. In the cited authorities, concession of bail was extended on account of infirmities in the prosecution case including doubtful participation of the accused persons, inconsistencies in the evidence or lack of sufficient incriminating material. However, in the present case, both the applicants are specifically nominated in the promptly lodged F.I.R. with participatory roles and sufficient incriminating material is available on record reasonably connecting them with commission of the alleged offence; therefore, the ratio laid down in the aforesaid authorities is not attracted to the present case.

11. As regards the contention regarding alleged infirmities in investigation, inconsistency between ocular account and medical evidence and other disputed questions of fact is concerned, the same cannot be conclusively resolved at this stage without recording evidence. At bail stage, deeper appreciation of evidence is not permissible. Prima facie, sufficient incriminating material is available on record reasonably connecting both the applicants with commission of the alleged offence. The offence alleged against the applicants falls within the prohibitory clause of section 497, Cr.P.C., carrying punishment of death or imprisonment for life and no ground has been made out to bring the case within the purview of section 497(2), Cr.P.C.

12. In view of what has been discussed above, both the applicants have failed to make out a case for grant of post-arrest bail. Consequently, these bail applications are dismissed.

13. Needless to observe that anything observed herein is tentative in nature and shall not prejudice either party during the course of trial.

JUDGE

Nadeem Qureshi *PA*