

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
MIRPURKHAS**

Criminal Bail Application No. S-100 of 2026

Applicant: Misri son of Jaffar Khan
Through Mr. Mehfooz Ali Laghari,
Advocate.

Criminal Bail Application No. S-192 of 2026

Applicant: Fateh alias Fateh Muhammad Lashari
alias Abdul Fateh
Through Mr. Ayatullah Khuwaja, Advocate.

Complainant: Gohar Rehman son of Chaudhary
Shafqat Raza.
Through Mr. Pervez Akhter Talpur and
Mr. Azal Karim Virk, Advocates.

The State: Through Mr. Shahzado Saleem A.P.G.

Dates of hearing: 07.07.2026.

Date of Common order: 22.07.2026.

O R D E R

KHALID HUSSAIN SHAHANI, J. — By this consolidated order, I intend to dispose of Criminal Bail Application No. S-100 of 2026, preferred by applicant Misri, and Criminal Bail Application No. S-192 of 2026, preferred by applicant Fateh alias Fateh Muhammad alias Abdul Fateh Lashari, both applications having arisen out of the same case bearing Crime No. 154 of 2025 registered at Police Station Satellite Town, Mirpurkhas, for offences punishable under sections 302, 324, 447, 147, 148, 149, 506(ii) and 504, P.P.C., and being anchored in an identical factual matrix, a common F.I.R., and substantially overlapping questions of law.

2. Shorn of unnecessary detail, the prosecution narrative is that complainant Gohar-ur-Rehman lodged the F.I.R. on 25.12.2025 at 1230 hours, asserting a subsisting land dispute between his side and the Lashari community. Pursuant to directions issued by this Court in a civil petition, the complainant party had commenced construction of a boundary wall over the disputed land. Upon receiving intimation that the wall was being demolished, the complainant and his

companions proceeded to the site, where several named accused, allegedly armed, were present. The F.I.R. attributes direct firing to accused Imdad and Abdul Salam upon Shahzad Ali; an iron-rod blow to accused Afzal; a subsequent Kalashnikov discharge upon the already-fallen Shahzad Ali to accused Fateh; pistol fire to accused Aamir and Amar; further firing to accused Inam and Umar; and mere presence, armed with a genti/teekam or shovel, to accused Misri. Shahzad Ali succumbed to his injuries; Ghulam Sabir sustained injuries and survived.

3. Touching the procedural history, applicant Misri's post-arrest bail application No. 130 of 2026 was declined by the learned 1st Additional Sessions Judge, Mirpurkhas, vide order dated 13.02.2026. Applicant Fateh's post-arrest bail application No. 357 of 2026 met a similar fate at the hands of the same forum vide order dated 21.04.2026. Both applicants now invoke the jurisdiction of this Court under section 497, Cr.P.C.

4. Learned counsel for applicant Misri submits that notwithstanding his nomination, no overt act causing injury to the deceased or the injured witness stands attributed to him; that his presence with a digging implement, unconnected to any injury on record, constitutes the sum total of the allegation; that the prosecution case is rooted in admitted antecedent enmity over land; that no independent witness has been cited; and that his continued incarceration serves no investigative purpose, his case falling within the contemplation of further inquiry under section 497(2), Cr.P.C. Reliance is placed on *Sikandar Hayat v. The State* (2022 SCMR 198) and allied authority for the proposition that unsubstantiated, generalized attribution in a multiple-accused case warrants closer scrutiny at trial.

5. Learned counsel for applicant Fateh, adopting the co-applicant's submissions to the extent germane, contends that his case too merits further inquiry, citing: a delay of approximately two and a half hours in lodging the F.I.R.; material discord between ocular, medical, and forensic evidence; the unresolved question of common intention or common object, properly a matter for trial; and the absence of concrete material substantiating apprehension of evidence-tampering. Reliance is placed on *Mukhtar Ahmad v. The State* (2003 SCMR 1374) and *Sikandar Hayat* (supra), together with the settled proposition that a solitary circumstance casting doubt upon an accused's participation suffices to extend the concession of bail as a matter of further inquiry.

6. Learned counsel for the complainant, joined by the learned Additional Prosecutor General, resists both applications, submitting that the occurrence

stemmed from a land dispute; that both applicants stand specifically nominated with distinct roles; and that the offence falls squarely within the prohibitory clause. As regards applicant Fateh, it is urged that he is attributed the direct and lethal role of discharging a Kalashnikov upon the already-fallen deceased, rendering his case distinguishable from that of a merely present accused. As regards applicant Misri, it is urged that he formed part of the unlawful assembly from its inception, armed with an implement used in demolishing the boundary wall, thereby attracting vicarious liability under sections 148 and 149, P.P.C. In support of these submissions, reliance is placed on a compendium of authorities including 2024 SCMR 1576, 2025 YLR 279, 2023 SCMR 1724, 2017 SCMR 325, 2026 MLD 309, 2011 MLD 1171, 2012 P.Cr.L.J 1749, 2001 P.Cr.L.J 649, 2008 YLR 2293, and 2023 YLR 634; besides , the *roznamcha* entry and the civil order concerning the boundary wall, principally to demonstrate that direct nomination coupled with an overt act of firing is not lightly interfered with at bail, that recovery and forensic corroboration strengthen the case against a named assailant, and that Courts are disinclined to extend bail where an accused is shown to have taken an active part in a murderous assault upon a fallen or unarmed victim. It is further urged that recovery of a weapon and forensic material specifically link applicant Fateh with the occurrence, disentitling him to the concession sought.

7. I have heard learned counsel for the respective parties at length and perused the record with their assistance. It is axiomatic that at the bail stage this Court is neither required nor permitted to conduct a miniature trial or to record a definitive finding on the veracity of the prosecution case; the exercise is confined to a tentative assessment of whether reasonable grounds exist to believe the accused guilty of an offence within the prohibitory clause, or whether the case falls within the ambit of further inquiry under section 497(2), Cr.P.C.

8. Before embarking upon such tentative appraisal qua each applicant, it is apposite to juxtapose the precedents cited by the rival sides, as they proceed upon distinct, though reconcilable, premises.

9. The authorities invoked by the applicants proceed on the principle of individuation of role within a group occurrence. *Sikandar Hayat* (supra) holds that where the role attributed to an accused in a multiple-accused case is general, unsubstantiated by injury, and uncorroborated by independent material, the matter is more appropriately treated as one of further inquiry rather than concluded adversely on the strength of mere nomination. *Mukhtar Ahmad* (supra) is invoked

for the kindred proposition that a solitary circumstance generating reasonable doubt as to actual participation suffices to extend bail as a matter of further inquiry, the standard of satisfaction at this stage being appreciably lower than that required for conviction.

10. The authorities cited on behalf of the complainant proceed upon a complementary plane, namely the consequence of participation in an unlawful assembly once common object is established. Chief among these, 2023 SCMR 1724 explains the scope of section 141, P.P.C., and is relied upon for the proposition that once membership of an unlawful assembly of five or more persons sharing a common object is shown, vicarious liability under section 149, P.P.C. attaches to every member irrespective of the specific part played. The remaining citations, taken together, are relied upon for the complementary propositions that specific nomination coupled with an overt act of firing is not lightly interfered with at the bail stage; that recovery and forensic corroboration fortify the case against a specifically named assailant; and that Courts are disinclined to extend bail to an accused shown to have taken an active part in a murderous assault upon an unarmed or fallen victim.

11. On a conjoint reading, the two lines of authority are not in conflict but operate within distinct factual compartments. The further-inquiry principle and the vicarious-liability principle are both sound statements of law, their applicability turning entirely on whether the accused concerned is shown, *prima facie*, to have transcended mere presence. Where the material discloses only presence, unaccompanied by a specific overt act and with no correlation between the attributed weapon and the injuries sustained, the defence authorities govern; the vicarious-liability doctrine cannot be stretched to supply, by presumption, the absence of such material. Conversely, where the F.I.R. attributes a specific and lethal overt act, corroborated by recovery or forensic evidence, the complainant's authorities assume primacy, and the further-inquiry jurisprudence, founded on a merely nominal role, stands distinguished.

12. Applying this reconciliation, the citations relied upon for applicant Misri, confined as they are to further inquiry in cases of mere presence, are squarely attracted, the material against him disclosing no overt act and no injury correlating with the implement ascribed to him. The vicarious-liability authorities relied upon by the complainant apply with greater force to applicant Fateh, to whom a specific,

lethal, and corroborated role has been directly attributed; the further-inquiry authorities cited on his behalf stand correspondingly distinguished.

13. So far as applicant Misri is concerned, the F.I.R. attributes to him no fire shot, no hatchet blow, no iron-rod blow, and no injury of any description. His presence is shown with a genti/teekam or shovel, yet neither the deceased nor the injured witness is alleged to have sustained injury through such implement. His role is thus materially distinguishable from that of the accused alleged to have fired upon the victims. Mere presence in a multiple-accused case, absent a specific overt act and absent correlation between the attributed weapon and the injuries, has consistently been treated by the superior Courts as attracting further inquiry. Whether his presence was innocent, passive, or sufficient to attract common object or common intention is a matter requiring evidence at trial and cannot be conclusively presumed against him at this stage.

14. The complainant's contention that applicant Misri shared the common object of the unlawful assembly warrants cautious treatment. While specific injury is not invariably indispensable where prior meeting of minds or active participation is otherwise clearly disclosed, the tentative material presently available against applicant Misri is confined to his presence and possession of a digging implement at the site of the wall's demolition. Whether such presence, unaccompanied by further incriminating circumstance, suffices to infer the requisite *mens rea* under sections 148 and 149, P.P.C., is itself a debatable question demanding deeper appreciation at trial. I am, therefore, tentatively persuaded that the case of applicant Misri falls within the domain of further inquiry.

15. The case of applicant Fateh rests on a different footing. A specific role of firing upon the deceased is attributed to him in the F.I.R., reinforced by forensic and recovery material. The infirmities highlighted by his counsel including delay in lodging the F.I.R., the ocular-medical consistency question, and the general difficulty of segregating liability in a multi-accused occurrence are not without relevance, but at this stage the direct nomination, coupled with a specific lethal role, *prima facie* furnishes reasonable grounds connecting him with the offence. The defence authorities are distinguishable to the extent that applicant Fateh is not a person of mere presence but one to whom a direct and lethal part has been assigned in the F.I.R. itself.

16. The orders of the Court below have been duly considered; however, dismissal thereof does not foreclose independent examination by this Court of the

tentative worth of the material on record. The position qua applicant Misri remains one of absence of any specific injurious act despite nomination; the position qua applicant Fateh remains one of a direct, corroborated, and lethal role, disentitling him to the extraordinary concession of bail at this stage.

17. In sum, the propositions advanced on behalf of applicant Misri, further inquiry, mere presence, and the necessity of distinguishing direct assailants from those generally implicated are attracted to his case; the propositions advanced by the complainant, concerning active participation in a murderous assault and unlawful assembly, are more appropriately applicable to applicant Fateh. The precedents cited by either side must thus operate according to the factual matrix peculiar to each accused, and not mechanically across both applications.

18. For the foregoing reasons, Criminal Bail Application No. S-100 of 2026, filed by applicant Misri is allowed. He shall be released on bail subject to furnishing solvent surety in the sum of Rs. 500,000/- and a personal recognizance bond in the like amount, to the satisfaction of the learned trial Court. Criminal Bail Application No. S-192 of 2026, filed by applicant Fateh alias Fateh Muhammad Lashari alias Abdul Fateh, is dismissed. It is clarified that the observations herein are tentative and shall not prejudice either side at trial, where the learned trial Court shall decide the matter strictly on the evidence adduced and in accordance with law.

JUDGE

Adnan Ashraf Nizamani