

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

*Criminal Bail Application No. S-52 of 2026.
(Khair Muhammad Abro vs The State)*

Applicant : Khair Muhammad Abro,
through Mr. Abdul Qadir Shaikh.

Respondents : State *through* Mr. Muhammad Raza
Katohar, Deputy Prosecutor General.

Complainant : Muhammad S/o Morial Abro,
through Mr. Riaz Ali Shaikh.

Date of hearing : 30.03.2026.

Date of Order : 30.03.2026.

ORDER

Ali Haider 'Ada' J:- The applicant seeks post-arrest bail in Crime No. 15 of 2024 registered at Police Station Kamaldero for offences punishable under Sections 337-A(i), 337-A(iii), 337-A(v), 337-F(i), 337-F(vi), 147, 148, 149, 504, and 34 PPC.

2. Earlier, the applicant had approached for pre-arrest bail, which was declined up to this Court. However, before the Honourable Supreme Court, the said bail application was withdrawn. Subsequently, the applicant was arrested and filed applications for post-arrest bail before the trial Court as well as before the learned Additional Sessions Judge, Kandiaro, but remained unsuccessful. Hence, the present application.

3. Briefly, the prosecution case is that the applicant allegedly caused a head injury to the complainant, which has been described as *Shujjah Munaqila* under Section 337-A(iv) PPC, while co-accused caused injuries to other witnesses. The incident is stated to have occurred on 07.05.2024, whereas the FIR was lodged on 01.06.2024.

4. Learned counsel for the applicant contended that although the applicant remained unsuccessful in the earlier round of pre-arrest

bail, the same does not bar him from seeking post-arrest bail, as both stand on different legal footings and are governed by distinct considerations. He further argued that the prosecution's own medical officer supports the plea of alibi of the applicant, as he admitted that on the date of the incident (07.05.2024), the applicant remained under his treatment from 11:00 a.m. to 05:00 p.m., whereas the time of occurrence, as per FIR, is 01:30 p.m. It is further submitted that the said medical officer is the same person who examined the injured complainant as well as treated the applicant. Learned counsel also emphasized that, in fact, one Muhammad Ramzan (brother of the complainant) had lodged FIR No. 08 of 2025 against the complainant, mentioning the same date and time of occurrence, indicating that the dispute was actually between two brothers and their respective families. Later, the complainant allegedly twisted the version and involved the present applicant falsely. He argued that this aspect was not previously brought before the Courts, where only the plea of counterblast FIR (lodged by Abdul Rehman, brother of the applicant, vide FIR No. 13 of 2024) was considered. Lastly, he contended that the applicant is no longer required for further investigation, and in view of the plea of alibi and applicant is no more required for further probe, the case calls for further inquiry.

5. Conversely, learned counsel for the complainant opposed the bail application on the ground that the applicant's bail has already been declined earlier and, therefore, he is not entitled to the concession of bail.

6. Learned Deputy Prosecutor General also opposed the application, submitting that apart from earlier dismissal of bail, there are specific allegations against the applicant, and the injury attributed to him falls within the prohibitory clause, thus disentitling him from the grant of bail.

7. Heard, learned counsel for the parties and perused the material available on record.

8. At the very outset, it is to be noted that the scope and principles governing pre-arrest bail and post-arrest bail are entirely distinct and operate in different legal domains. Mere dismissal of pre-arrest bail cannot, by itself, be treated as a valid ground to disentitle an accused from seeking the concession of post-arrest bail. This legal position has been settled by a Division Bench of this Court in the case of *Roshan Ali Shaikh and others versus Pakistan through Secretary, Ministry of Law and others (2023 YLR 943)*, wherein it was held:

15. *In another unreported case of Syed Ali Raza and others v. Federation of Pakistan through Secretary Ministry of Law, Islamabad and others (Civil Petitions Nos. 194, 298 and 304 of 2018) the Hon'ble Supreme Court of Pakistan has held that;-*

8With respect to the learned Judges of the High Court, we may point out that the principles governing pre-arrest and post arrest bail are different and merely because the petitioners' petitions for pre-arrest bail were dismissed was not a sufficient reason to also deprive them with the concession of post-arrest bail.

In the case Lt. Gen. (Rtd.) Fazlehaq v. The State (1989 SCMR 1724) the Hon'ble Supreme Court of Pakistan has held that;-

6. *The learned counsel for the petitioner has requested us that on observation be made in this order that the test somewhat prematurely applied by the High Court in para.8 of the impugned judgment may not be taken by the High Court or Courts subordinate to it to prejudice the matter of pending application of the petitioner for bail after arrest. The other is that an observation be made that in view of the nature of the proceedings and the belated stage at which the petitioner has been implicated there will be expeditious disposal of the pending matters.*

7. *Observation made in an order dealing with a matter of bail before arrest do not ordinarily and should not generally affect the exercise and undertaken or to be undertaken after arrest, for grant or refusal of bail. We are sure that the Courts will follow that principle and be not prejudiced in any matter thereby. We are also confident that keeping in view the nature of the proceedings an early and expeditious disposal of the matter will be ensured at every level.*

In the case of Muhammad Hussain v. The State (1982 SCMR 227) the Hon'ble Supreme Court of Pakistan has held that,-

10.We can, however, not lose sight of the fact that pre-arrest bail and bail after arrest are based on entirely different principles and the rejection of an application for the former does not have any bearing on the latter.

9. On this aspect, it is quite clear that mere dismissal of the petitioner's pre-arrest bail is not a sufficient ground to deprive him of the concession of post-arrest bail. Thus, the refusal of pre-arrest bail does not prejudice the case of an accused while seeking post-arrest bail, as both remedies are governed by different considerations, principles, and legal tests.

10. The second aspect of the applicant's case pertains to the plea of alibi, which, in the present matter, finds prima facie support from the statement of the prosecution's own witness, i.e., the Medical Officer, who not only examined the injured but also treated the applicant. Such circumstance, at least tentatively, lends support to the contention that the applicant was elsewhere at the relevant time.

11. It is now a settled principle of law that the plea of alibi, though a defence, can be considered even at the bail stage and cannot be brushed aside merely on the ground that it pertains to deeper appreciation of evidence. In the case of *Zaigham Ashraf v. The State and others (2016 SCMR 18)*, the Honourable Supreme Court of Pakistan held that no hard and fast rule exists against considering the plea of alibi at the bail stage, and while deciding a bail application, the Court is not confined only to the material collected by the prosecution but must also give due consideration to the defence taken by the accused. Similarly, in *Malik Muhammad Saleheen and others v. Arshad Siddiq and others (1997 SCMR 1829)*, it was held that the plea of alibi raised in bail proceedings cannot be outrightly rejected and may be examined for the purpose of determining entitlement to bail. Further guidance can be drawn from the case of *Fahad Hussain and another v. The State (2023 SCMR 364)*, wherein the Honourable Apex Court reiterated that it is

a well-settled principle of criminal jurisprudence that every accused is presumed to be innocent until proven guilty, and the benefit of doubt, if arising from the circumstances of the case, can be extended even at the bail stage. Reliance is also placed upon *Chaudhry Nadeem Sultan v. The State* (2022 SCMR 663), wherein similar principles have been affirmed. In the case of *Khalid Javed Gillan v. The State* (PLD 1978 SC 256), the Honourable Supreme Court of Pakistan was pleased to grant bail to the accused, inter alia, that a medical practitioner of good standing had confirmed that the accused was under his treatment at the relevant time, thereby lending support to the plea of alibi.

12. It is by now a well-settled and recognized principle of criminal jurisprudence that the mere gravity or heinousness of an offence cannot, by itself, be made a ground to refuse bail, if otherwise the case of the accused calls for further inquiry. Likewise, bail cannot be withheld as a measure of punishment. In this regard, reliance is placed upon the case of *Husnain Mustafa v. The State and another* (2019 SCMR 1914).

13. Keeping in view the foregoing discussion, reasons, and the facts and circumstances of the case, the instant bail application is hereby allowed. Consequently, the applicant, **Khair Muhammad S/o Muhammad Dawood Abro**, is admitted to post-arrest bail in Crime No. 15 of 2024 registered at Police Station Kamaldero, subject to his furnishing solvent surety in the sum of Rs. 100,000/- (Rupees One Hundred Thousand only) along with a P.R. Bond in the like amount to the satisfaction of the learned trial Court. Needless to observe that the observations made herein are tentative in nature and shall not, in any manner, influence the trial.

JUDGE