

ORDER SHEET
THE HIGH COURT OF SINDH, MIRPURKHAS CIRCUIT

Crl. Bail Application No. S-457 of 2026

Applicant By : Mr. Mir Sarfaraz Ali Talpur, Advocate.
Respondent By : Mr. Neel Parkash, D.P.G.
Complainant By : Mr. Raichand Harijan, Advocate.
Date of hearing : 07.10.2026
Date of order : 07.10.2026

ORDER

Muhammad Humayon Khan, J.: Through this Criminal Bail Application under section 498, Cr.P.C., the applicant/accused, Ibrahim son of Muhammad Yousif Gorchani, seeks confirmation of ad-interim pre-arrest bail in Crime No.36 of 2026, registered at Police Station Mirwah Gorchani, initially under sections 506(ii), 504, 337-A(i), 337-F(i) and 34, PPC. His prayer for confirmation was declined by the learned Additional Sessions Judge-II, Mirpurkhas, in Criminal Bail Application No.667 of 2026, vide order dated 18-08-2026. He was thereafter admitted to ad-interim pre-arrest bail by this Court on 24-08-2026, subject to furnishing solvent surety of Rs.30,000/- and a P.R. bond in the like amount. The present application is for confirmation or otherwise of that concession.

2. Briefly stated, complainant Jan Muhammad son of Khuda Bux Gorchani lodged the FIR on 05-06-2026 at 1820 hours regarding an occurrence allegedly taking place on 25-05-2026 at about 2130 hours. He stated that construction material, including crushed stone, was lying beside a link road near the village. His son, Hazoor Bux, returned from Mirwah Town and informed him that Ibrahim had beaten him when he objected to the removal of that material in a loading rickshaw. The complainant thereafter proceeded to the link road near the grid station, where he allegedly found Ibrahim armed with a hatchet and Sajid and Javed armed with lathis.

3. According to the complainant, upon his questioning the removal of the material, Ibrahim abused him and struck his face/mouth with the back of the hatchet, causing him to fall. Sajid and Javed allegedly inflicted lathi blows upon his

body. On hearing his cries, his brother Manthar arrived and intervened. Ibrahim allegedly threatened to kill the complainant party if they again objected to the removal of the material, whereafter the accused departed. The complainant states that he obtained a police letter, received first aid at Taluka Hospital, Mirwah Gorchani, and was referred to Civil Hospital, Mirpurkhas. He subsequently lodged the FIR following treatment.

4. The learned Court below, by its order dated 18-08-2026, confirmed pre-arrest bail of Sajid Hussain and Javed but declined confirmation to Ibrahim. It distinguished the applicant on account of the particular facial injury attributed to him and the final medical opinion concerning Jan Muhammad. The final medico-legal certificate dated 03-08-2026 classifies Injury No.1 as Shajjah-i-Khafifah, Injury No.2 as Itlaf-i-Salahiyyat-i-Udw and Injury No.3 as other hurts. The learned Court below treated the second classification as attracting section 336, PPC.

5. Learned counsel for the applicant, Mr. Mir Sarfaraz Ali Talpur, contended that the applicant is innocent and has been implicated owing to personal hostility; that the FIR was lodged after an unexplained delay of eleven days; and that the delay afforded sufficient opportunity for deliberation and consultation. He questioned the nature of the injuries, the medical foundation of the prosecution case and the applicability of the penal provisions. He further submitted that the offences initially mentioned in the FIR fall outside the prohibitory clause of section 497(1), Cr.P.C.; that the co-accused have obtained bail; and that the applicant has a fixed abode, clean antecedents and is willing to cooperate with the investigation. He accordingly prayed for confirmation on the ground of further inquiry under section 497(2), Cr.P.C.

6. Conversely, learned Deputy Prosecutor General, Mr. Neel Parkash, assisted by counsel for the complainant, opposed confirmation, maintaining that the applicant is specifically nominated by the injured complainant as the person who struck his face/mouth with the back of a hatchet; that the medical material lends support to the allegation of facial injury; and that the final classification cannot be disregarded merely because the FIR initially mentioned less serious hurt provisions. He submitted that the applicant's role is distinguishable from those of the co-accused and that the material does not disclose sufficient grounds to infer mala fide implication warranting pre-arrest protection.

7. I have heard learned counsel for the applicant and learned Deputy Prosecutor General for the State and have perused the record with their assistance.

Only a tentative assessment is permissible. The Court must nevertheless examine the actual incriminating and exculpatory material; describing an objection as a defence plea does not dispense with that obligation. *Abdul Rehman alias Muhammad Zeeshan v The State and others* 2023 SCMR 884 and *Khair Muhammad and another v The State through P.G. Punjab and another* 2021 SCMR 130 recognise the relevance of considering the merits while determining a prayer for pre-arrest bail.

8. In *Azhar Pervaiz Bukhari v The State and another* 2024 SCMR 1719, the Honourable Supreme Court reiterated the exceptional nature of pre-arrest bail and the need to substantiate grounds warranting protection against abuse of criminal process. That authority concerned a dishonoured-cheque prosecution; its relevance here is confined to the governing principles. Equally, *Muhammad Saeed v The State through A.G. Islamabad and another* 2025 SCMR 629 explains that mala fide may be inferred from surrounding circumstances and need not invariably be established through direct evidence. The defence circumstances must, therefore, be considered cumulatively.

9. The applicant's assertion that no specific role is assigned to him is not supported by the FIR. The injured complainant expressly attributes the blow on his face/mouth to Ibrahim and identifies the blunt side of the hatchet as the part used. This is a particular allegation rather than one resting solely upon the applicant's presence or the invocation of section 34, PPC. Its truth remains to be proved, but it constitutes material requiring consideration at this stage. *Qayyum Khan v The State and others* 2022 SCMR 273 illustrates the significance of specific injury attribution when assessing a bail claim. It does not establish that nomination alone invariably defeats bail.

10. The final certificate dated 03-08-2026 records that radiological examination disclosed no traumatic bony lesion and that the maxilla and mandible were intact. It also records a dental opinion, based upon an OPG examination performed privately and received from THQ Mirwah Gorchani, noting missing teeth. These findings must be read together. The absence of a fracture of the facial bones does not, by itself, contradict the recorded dental finding. However, the certificate is not conclusive proof that the teeth were lost in this occurrence or that the applicant caused that loss. The prosecution must establish the pre-injury condition, the nature of the dental injury and its causal connection with the alleged blow through the relevant medical and other evidence.

11. For the limited purpose of this application, the final opinion concerning Jan Muhammad, read with his specific account of a blow to the face/mouth and the medical material discussed in the impugned order, provides prima facie support requiring adjudication at trial. The final classification has not been shown, on the material presently available, to have been displaced by a contrary opinion concerning this injured person. The Court cannot pronounce finally upon the dental causation or the appropriate hurt provision in these proceedings. It is equally inappropriate to treat the prosecution case as confined permanently to the provisional sections appearing in the FIR.

12. The hospital correspondence relied upon by the defence requires particular care. The Civil/DHQ Hospital, Mirpurkhas, letter dated 01-08-2026 concerns Hazoor Bux son of Jan Muhammad. It confirms an emergency visit on 25-05-2026 under OPD No.14725, states that he was not admitted, and reports that no radiological record of that hospital was found for him on that date. The provisional certificate annexed to the application likewise concerns Hazoor Bux. Those documents must not be substituted for the record of his father. The hospital letter does not declare Jan Muhammad's dental findings fabricated or withdraw his final medical opinion. Nor does absence of inpatient admission establish that Hazoor Bux sustained no injury.

13. *Mir Muhammad v The State through Prosecutor General Sindh 2024 SCMR 805* reinforces the need to scrutinise conflict between the ocular account and medical material at the bail stage. That principle has been applied here. The allegation against Ibrahim is of using the back of a hatchet on the face/mouth; the mere absence of a facial-bone fracture does not make that mechanism impossible. The objections concerning the dental opinion remain available to the applicant, but the correspondence about a different injured person does not presently establish the asserted contradiction in Jan Muhammad's medical record.

14. The eleven-day delay in registration of the FIR is substantial and has been given due weight. *Mazhar Ali v The State and another 2025 SCMR 318* recognises the relevance of unexplained delay to further inquiry. The complainant refers to obtaining a police letter and undergoing treatment, but that account does not automatically explain every day of the interval, particularly when he had already approached the police. The delay permits scrutiny for consultation and embellishment. Nevertheless, assessed with the particular account of the injured complainant and the medical material, it does not presently displace the reasonable

grounds arising against this applicant. The adequacy of the explanation and the timing of the initial reporting remain open to examination at trial.

15. The preventive proceedings under sections 107, 150 and 151, Cr.P.C., disposed of on 18-07-2026, disclose strained relations and undertakings to maintain peace. They do not, by their terms, amount to an acquittal or an order compounding Crime No.36/2026. Likewise, the September FIR and treatment papers relate to a later occurrence and cannot be treated as medical evidence of the May incident. These documents are relevant to the plea of hostility; they do not themselves determine which account of the present occurrence is correct. Applying *Muhammad Saeed 2025 SCMR 629*, I do not find their cumulative effect sufficient to establish a mala fide attempt to secure the applicant's arrest in this crime.

16. The rule of consistency has also been considered. *Mudassar Khursheed v The State and another 2025 SCMR 1613* requires comparison of the roles and material concerning the accused claiming parity. The FIR does allege lathi blows by Sajid and Javed; their roles should not, therefore, be described as mere presence. Even so, the particular blow to the face/mouth and the dental injury relied upon against Ibrahim distinguish his case from theirs. Their bail does not automatically entitle him to identical relief. This conclusion neither reopens their bail nor expresses a final opinion upon common intention.

17. The plea concerning the prohibitory clause must be tested against the subsequent medical material. Section 336, PPC, provides, in the circumstances prescribed by that provision, imprisonment extending to ten years as ta'zir, in addition to the applicable consequences concerning qisas or arsh. The final classification relied upon by the prosecution thus raises an allegation carrying punishment within the prohibitory clause. This is not a finding that a ten-year sentence must ultimately follow. It is a tentative assessment of the applicable allegation, and rests upon the medical material rather than the addition of a statutory label alone.

18. *Muhammad Akhtar v The State and others 2025 SCMR 1631* recognises that where an accused would be entitled to post-arrest bail, requiring incarceration merely as a procedural formality serves no meaningful purpose. The Court must respect that principle. The present application, however, is not confined to the bailable or non-prohibitory hurt provisions considered in that authority: the final opinion concerning Jan Muhammad and the specific facial blow attributed to Ibrahim provide a distinct basis for considering section 336, PPC. On the present

assessment, entitlement to post-arrest bail cannot be assumed solely from the provisional sections appearing in the FIR.

19. The applicant's fixed residence, asserted clean antecedents and attendance under interim protection are circumstances in his favour. No finding of abscondence or misuse of bail is being made. Those considerations have been weighed with the FIR delay, hostility and medical objections. Taken together, however, they do not presently reduce the material against this applicant to sufficient grounds for further inquiry or establish abuse of process warranting confirmation. The refusal rests upon the specific accusation and the supporting medical material considered cumulatively, rather than the seriousness of the allegation alone.

20. For the foregoing reasons, the Criminal Bail Application is dismissed. The ad-interim pre-arrest bail granted to Ibrahim son of Muhammad Yousif Gorchani vide order dated 24-08-2026 is recalled. His bail bond stands cancelled and the surety stands discharged.

21. The learned trial Court shall proceed expeditiously and endeavour to conclude the trial within three months from receipt of this order, subject to the requirements of a fair trial. The SSP, Mirpurkhas, shall ensure attendance of the investigating officer and prosecution witnesses, including the relevant medical witnesses, on the dates fixed. The investigating officer shall place the original medical and dental material before the trial Court in accordance with law. Unnecessary adjournments shall be avoided.

22. All observations made hereinabove are tentative and confined to disposal of this application. They shall neither prejudice either party nor influence the learned trial Court in determining the case on its merits. Any subsequent application for post-arrest bail shall be considered independently in accordance with law and the material then available.

The Criminal Bail Application stands disposed of in the above terms.

JUDGE

Faisal