

HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Bail Applications No.S-517 and 925 of 2026

Applicants:	Muhammad Saad through Mr. Aijaz Ahmed Shaikh, Advocate along with Mr. Kamran Baig, Advocate.
	Nizamuddin through Syed Tarique Ahmed Shah, Advocate.
Complainant:	Muhammad Dawood through Mr. Sameeullah Rind, Advocate.
Respondent:	The State through Ms. Rameshan Oad, Deputy Prosecutor General, Sindh.
Date of hearing:	17.08.2026.
Date of order:	17.08.2026.

O R D E R

RIAZAT ALI SAHAR, J: - By this common order, I intend to dispose of Criminal Bail Application No.S-517 of 2026, filed by applicant/accused Muhammad Saad, and Criminal Bail Application No.S-925 of 2026, filed by applicant/accused Nizamuddin, as both applications arise out of one and the same Crime No.08 of 2025, registered at Police Station Hatri, Hyderabad, for offences punishable under Sections 302 and 34 PPC, arising from the murder of Saud Ali.

2. The prosecution case, as reflected in the FIR, is that the complainant, an employee of the Public Health Department, had four brothers, including deceased Saud Ali, aged about 18 years, and that the complainant party had an old enmity with persons belonging to the Chang community, including Nizamuddin and others. It is alleged that the young men of the rival group used to create disturbance by accelerating and blowing horns of motorcycles in front of the complainant's house, despite intervention through respectable persons of the locality. About two days prior to the occurrence, co-accused Azam Chang and Muhammad Saad allegedly assaulted complainant's relative Kashif with hand clips, whereupon deceased Saud Ali intervened and rescued him and Kashif subsequently informed the complainant that Azam and Saad had extended threats to his life. On 05.01.2025 at about 7:30 p.m., while the complainant

was proceeding to offer Isha prayer, he saw deceased Saud Ali and Kashif standing in front of his house and two motorcycles approaching them. According to the FIR, Azam Chang was driving one motorcycle with applicant Nizamuddin sitting behind him, whereas applicant Muhammad Saad was driving the other motorcycle with co-accused Umair sitting behind him. Upon reaching near the complainant party, Nizamuddin and Umair allegedly made straight fires with pistols towards Saud Ali and Kashif, as a result of which Saud Ali sustained a firearm injury on his chest and subsequently succumbed to the injury at Civil Hospital, Hyderabad. The accused persons thereafter allegedly made aerial firing and escaped from the place of occurrence. After post-mortem examination, the dead body was handed over to the complainant and the present FIR was registered. During investigation, Muhammad Saad was arrested on 08.01.2025, whereas Nizamuddin obtained protective bail and thereafter faced proceedings before the learned Courts below, where his pre-arrest/post-arrest bail requests were dismissed. The challan has meanwhile been submitted before the learned trial Court and the matter is pending trial.

3. Learned counsel for applicant Muhammad Saad contended that the applicant has not been attributed any firing or infliction of injury upon the deceased or the injured witness. He contended that, according to the FIR itself, the specific role of making straight fires has been assigned to Nizamuddin and Umair, whereas Saad is merely alleged to have driven the motorcycle. He contended that neither any weapon was recovered from the applicant nor has any injury been attributed to him and his alleged participation is, therefore, distinguishable from that of the actual shooters. Learned counsel further contended that co-accused Umair, who was similarly not attributed the fatal injury in the FIR and was subsequently granted bail, as such, the rule of consistency is attributed to the case of applicant Muhammad Saad. He contended that the previous quarrel and alleged enmity cannot by themselves constitute sufficient grounds to deny liberty when the applicant's specific role is materially different from that of the principal assailants. Learned counsel further contended that the challan has been submitted, the applicant has remained in custody and the case against him, at the very least, calls for further inquiry within the meaning of Section 497(2), Cr.P.C. In support of his contention, he has relied upon a reported case as 2024 SCMR 1071.

4. Learned counsel for applicant Nizamuddin contended that the prosecution case, even if taken at its face value, requires further inquiry because two persons, namely Nizamuddin and Umair, have been assigned the role of firing, whereas the post-mortem record reflects only one firearm injury on the deceased. He contended that it is, therefore, a matter requiring determination at trial as to whose fire actually caused the fatal injury. He further contended that the investigating agency did not find the applicant to be a participant in the occurrence and, according to the defence, the applicant was shown differently in the challan, thereby creating two conflicting versions regarding his presence. Learned counsel contended that the applicant's alleged absence and the investigation report supporting his defence bring the matter within the ambit of further inquiry. He also relied upon the grant of bail to co-accused Umair and invoked the rule of consistency, contending that the applicant's case is on an even better footing. Learned counsel further contended that absconsion by itself cannot override a case otherwise falling within further inquiry; hence, he prayed for grant of bail to the applicant. In support of his contentions, he has relied upon the reported cases as 2012 SCMR 1137, 2016 SCMR 18, 2016 SCMR 2046, 2023 SCMR 1898 and 2025 SCMR 2059.

5. Conversely, learned counsel for the complainant strongly opposed both applications and submitted that the applicants have been nominated in the FIR with specific and distinct roles arising from a concerted attack committed pursuant to their common intention. He contended that the ocular account is furnished by the complainant, who was present at the scene, and is supported by the medical evidence regarding the firearm injury sustained by deceased Saud Ali. Regarding applicant Nizamuddin, learned counsel contended that the FIR directly attributes the firing to him and that he was allegedly riding on the motorcycle immediately behind co-accused Azam Chang, thereby placing him at the forefront of the occurrence. He contended that the previous incident involving Kashif, in which deceased Saud intervened, supplies a plausible motive and explains the subsequent armed attack. Regarding applicant Muhammad Saad, learned counsel contended that his role cannot be reduced to that of an innocent bystander because he allegedly drove the motorcycle carrying co-accused Umair, who, according to the prosecution, participated in the firing. He further contended that the

applicants came together on motorcycles, armed with pistols, and launched a coordinated attack, attracting Section 34 PPC and the principle of vicarious liability arising from common intention. Learned counsel further contended that the bail granted to Umair cannot mechanically extend to either applicant, particularly where the investigation and material circumstances concerning Umair were materially different. He further contended that both applicants have either attempted to evade the process of law or are capable of influencing witnesses because the parties belong to the same locality and admittedly have previous enmity. He, therefore, contended that the offence falls within the prohibitory clause of Section 497 Cr.P.C. and that no exceptional or further-inquiry circumstance has been established warranting release on bail. Learned counsel has also relied upon the reported cases as 2012 YLR 2416, 2025 YLR 279, 2015 PCr.LJ 1531, 2011 SCMR 1148, 2023 SCMR 1182, 2025 SCMR 129, 2025 SCMR 1967 and 2026 SCMR 1196.

6. Learned Deputy Prosecutor General, Sindh, supported the prosecution case and opposed the grant of bail, contending that the applicants are nominated in a case of murder punishable under Section 302 PPC. She contended that the ocular account, medical material and investigation *prima facie* connect the applicants with the occurrence, though their respective roles require separate consideration. She further contended that the trial is pending and the material witnesses are yet to be examined; therefore, the concession of bail may prejudice the prosecution, particularly in view of the alleged previous enmity between the parties.

7. I have heard learned counsel for the applicants, learned counsel for the complainant, learned Deputy Prosecutor General, Sindh, and have carefully examined the FIR, medical material, investigation record, challan and the impugned orders. At the bail stage, the Court is not required to undertake a deeper appreciation of evidence or record a final finding regarding guilt or innocence; rather, the tentative assessment is confined to determining whether reasonable grounds exist for believing that the accused is connected with the offence, or whether the case calls for further inquiry. At the same time, the mere fact that an offence falls within the prohibitory clause of Section 497 Cr.P.C. does not render every accused disentitled to bail, because the nature and extent of the role attributed to each accused must be examined independently.

8. So far as applicant Muhammad Saad is concerned, the FIR does not attribute to him the act of firing upon the deceased or injured witness. The specific allegation of making straight fires has been attributed to applicant Nizamuddin and Umair, whereas Saad is alleged to have been driving the motorcycle upon which Umair was travelling. Thus, his role is one of alleged facilitation/participation through driving the motorcycle, and not that of the principal assailant who actually fired upon the deceased. The distinction assumes significance because the prosecution itself has specified the individual acts of the participants. No firearm has been attributed to Saad; no recovery of weapon has been effected from him; and no injury has been assigned to him. The prosecution seeks to connect him principally through the doctrine of common intention under Section 34 PPC. However, whether the mere act of driving the motorcycle, in the circumstances of the present case, establishes beyond reasonable doubt that Saad shared the specific common intention to commit murder is ultimately a question to be determined after recording evidence at trial.

9. The applicability of Section 34 PPC, though capable of fastening joint liability upon persons acting in furtherance of a common intention, cannot be presumed merely from association or presence at the place of occurrence. At the bail stage, there must still be some material from which the requisite common intention may tentatively be inferred. In the present case, the prosecution has itself assigned distinct roles to the accused: the act of firing has specifically been attributed to Nizamuddin and Umair, whereas Muhammad Saad is alleged to have driven the motorcycle. There is no allegation that Saad himself was armed, that he exhorted the assailants to fire, or that he performed any overt act immediately connected with the actual firing. Whether his alleged act of driving the motorcycle formed part of a pre-arranged plan to commit murder, or whether the prosecution can otherwise establish the requisite meeting of minds, therefore, remains an evidentiary question requiring deeper examination at trial. At the bail stage, such uncertainty operates in favour of further inquiry rather than permitting the Court to conclusively attribute to him the homicidal intention alleged against the actual shooters.

10. The rule of consistency also requires careful application. It is not an inflexible rule that bail granted to one accused automatically entitles every co-accused to the same relief.

Consistency operates where the roles, circumstances and evidentiary position of the accused are substantially similar. In the present case, co-accused Umair was granted post-arrest bail by the learned trial Court on 19.07.2025. Although the prosecution has attempted to distinguish that order on the ground that Umair was subsequently found innocent by the Investigating Officer, that circumstance does not completely eliminate the comparative value of the order at the bail stage, particularly because the FIR itself attributes the actual firing to Umair, while the role of Saad is confined to driving the motorcycle. More importantly, the case against Saad is not stronger merely because he allegedly facilitated the movement of the alleged shooter; the prosecution must still establish the requisite common intention through legally admissible evidence. The distinction between Saad and Nizamuddin is, however, pronounced: Nizamuddin is expressly nominated as one of the persons who fired directly upon the deceased, whereas Saad is not.

11. The previous altercation between Saad, Azam and Kashif may furnish a circumstance relied upon by the prosecution to suggest motive, but motive, by itself, cannot substitute the requirement of proof connecting an accused with the homicidal act. At this stage, the Court cannot disregard the fact that the fatal firearm injury is attributed to persons other than Saad. The material placed before the Court, therefore, leaves a reasonable question regarding the extent of Saad's participation and whether his alleged presence as motorcycle driver was accompanied by the requisite common intention to commit the murder. Such a question is sufficient, in the peculiar facts of this case, to bring his case within the scope of further inquiry under Section 497 (2), Cr.P.C. His continued incarceration, after submission of the challan, would serve no useful purpose when the evidentiary question regarding his precise role is yet to be tested at trial. Consequently, without expressing any opinion on the ultimate merits of the prosecution case, applicant Muhammad Saad has succeeded in making out a case for the concession of bail.

12. It may also be observed that the expression "further inquiry" contemplated by Section 497(2), Cr.P.C. does not require the Court to arrive at a tentative conclusion that the accused is innocent. What is required is the existence of a reasonable doubt, arising from the material presently available, as to his participation in the offence in the manner alleged by the prosecution. Where such doubt calls for

further examination of the evidence before a definite conclusion can safely be reached, continued detention cannot be justified merely because the principal offence falls within the prohibitory clause. In Muhammad Saad's case, the absence of any firing role, absence of recovery of a firearm, the distinctly lesser role assigned to him in the FIR itself, and the question whether the requisite common intention can ultimately be established cumulatively constitute circumstances requiring further inquiry. These observations are, of course, tentative and shall have no bearing upon the prosecution's right to establish common intention through evidence at trial.

13. The position of applicant Nizamuddin, however, is materially different and cannot be equated with that of Saad. Applicant Nizamuddin is specifically nominated in the FIR and is expressly attributed the role of making a straight firearm shot towards the deceased and Kashif. His alleged role is, therefore, not merely associative; rather, he is placed by the ocular account among the persons who directly launched the armed attack. The medical evidence showing a firearm injury to the chest of the deceased is *prima facie* consistent with the occurrence described in the FIR. The argument that only one firearm injury was found on the deceased, whereas two persons are alleged to have fired, does not, at this stage, by itself demolish the prosecution case or convert the matter into one of further inquiry. It is not necessary at the bail stage to determine which particular shot caused the fatal injury, particularly when the prosecution alleges a concerted attack in furtherance of common intention. The precise evidentiary effect of the number of shots, the trajectory and the respective contribution of the assailants are matters for trial. The plea of consistency advanced by Nizamuddin is equally unavailable to him. Co-accused Umair's bail order cannot be treated as a precedent for applicant Nizamuddin merely because both were attributed firing, particularly when the investigation record, as placed before the Court, treated Umair differently and he was reportedly found innocent by the Investigating Officer and was let off with the approval of the superior police authority. Applicant Nizamuddin, in contrast, remains specifically connected with the occurrence through the direct ocular allegation of firing. The principle of consistency cannot be invoked to create parity between accused persons whose evidentiary positions are materially different. Likewise, the alleged investigation version regarding Nizamuddin's absence cannot be accepted at face value so as to displace the direct

nomination in the FIR; its probative value will have to be assessed after evidence is recorded. His alleged absconsion and the admitted previous enmity between the parties further constitute relevant circumstances, particularly when the material witnesses are yet to be examined.

14. For what has been discussed above, I find that Muhammad Saad occupies the comparatively lesser and facilitatory role of motorcycle driver, with no specific allegation of firing, no weapon attributed or recovered from him and with a material question regarding the extent of his common intention whereas Nizamuddin is assigned the principal and direct role of firing upon the deceased and the injured witness. The two applicants, therefore, cannot be placed in the same category because both are accused in the same crime. The former has made out a case falling within further inquiry, while the latter has not. Consequently, Criminal Bail Application No.S-517 of 2026 filed by applicant/accused **Muhammad Saad** is **allowed**. He shall be released on post-arrest bail subject to furnishing a solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand only) with PR bond in the like amount to the satisfaction of the learned trial Court, subject to the usual conditions that he shall attend the trial on each and every date of hearing, shall not tamper with the prosecution evidence, and shall not misuse the concession of bail. However, Criminal Bail Application No.S-925 of 2026 filed by applicant/accused **Nizamuddin** is **dismissed**. The material presently available on record, tentatively assessed, provides reasonable grounds connecting him with the commission of the offence, and his specific role as an alleged shooter distinguishes his case from that of applicant Muhammad Saad as well as from the circumstances in which co-accused Umair was granted bail.

15. Nothing contained in this order shall be construed as an expression of opinion on the merits of the case, and the learned trial Court shall decide the matter strictly on the basis of evidence brought before it, uninfluenced by any observation made herein.

JUDGE