HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Present: Justice Jawad Akbar Sarwana

Crl. Bail Application No.S-1136 of 2025

Applicant	:	Usman S/o Allah Warayo Through Mr. Ashfaque Ahmed Mallah Advocate
Complainant	:	Malak Nasir Mehmood Through Mr. Ahsan Gul Dahri Advocate
Respondent	:	The State Through Mr. Khalid Hussain Lakho, DPG Sindh
Date of hearing & Short Order	:	**24.11.2025**
Date of reasons	:	**04.11.2026**

O R D E R

JAWAD AKBAR SARWANA, J: Through the captioned pre-arrest bail application, the applicant/accused Usman S/o Allah Warayo seeks pre-arrest bail in Crime No.23 of 2025, registered at Police Station Kadhan, District Badin, for the offences U/Ss 324, 114, 337-F(vi), 337-L(ii), 504 and 34 PPC. Earlier, his first bail application viz. Cr. B.A. No. 844 of 2025, was declined by the learned IInd Additional Sessions Judge, Badin, vide order dated 11.06.2025.

2. I have heard the learned counsel for the applicant/accused, complainant and the learned DPG Sindh and have perused the record, and my observations concerning whether the question of pre-arrest bail is made out or not are as herein below.

3. The background of the matter is set out in the FIR, which, for the sake of brevity, is not reproduced and may be read into this paragraph ad seriatim. It is pertinent to mention here that the applicant/accused, Usman Allah Warrayo, is accused of instigating his brother, Qurban Mallh, “to kill him [the complainant]”, and the latter, i.e. his brother, is at large, absconding from investigation and trial.

4. The case of the applicant/accused, at this stage of pre-arrest bail, turns on a tentative assessment in favour of demonstrating mala fide on the part of the complainant and/or the police. To this end, the applicant has failed to point out any material suggesting that the complainant or the police acted with an ulterior motive or with the object of humiliating or disgracing him through arrest. Although a previous dispute between the parties has been asserted, such dispute, by itself, is insufficient to establish mala fide, particularly when the applicant is specifically nominated in the FIR with the allegation of instigating the co-accused, his brother, Qurban Mallah, to assault the complainant, who sustained injuries supported by medical evidence. The delay in lodging the FIR has also been explained by reference to medical treatment and attempts at settlement. In these circumstances, no reasonable basis for inferring mala fide or an ulterior motive warranting the extraordinary relief of pre-arrest bail has been made out.

5. Furthermore, the final medico-legal report dated 21.04.2025 describes the complainant Malik Nasir Mehmood’s injuries caused by a hard and blunt weapon as expressly a displaced fracture of the lower end of the right ulna. This supports the medical officer's classification under Section 337-F(vi) PPC, classifiable as *Ghayr-Jaifah Munaqqilah*. Therefore, Malik Nasir Mehmood’s medical examination, both provisional and final, confirms that he suffered the stated injuries on the date mentioned in the FIR, which does not appear doubtful at this stage.

6. The injury attributed to the complainant has been classified in the final medico-legal certificate as Ghayr-Jaifah Munaqqilah, punishable under Section 337-F(vi), PPC. The offence is cognizable and non-bailable under the Second Schedule to the Cr.P.C. and entails liability to daman, with imprisonment of either description extending to seven years as ta'zir, which is discretionary. Thus, although the offence is non-bailable, it does not fall within the prohibitory clause of Section 497(1), Cr.P.C. Be that as it may, it would be premature to consider that aspect or the exceptions to such imprisonment for the purposes of deciding pre-arrest bail. It is settled law that pre-arrest bail is an extraordinary relief that may be granted only in extraordinary situations,

for example, to protect innocent persons against victimisation through abuse of law for ulterior motives; and that pre-arrest bail is not to be granted as a substitute or alternative to post-arrest bail.[1]

7. Though there is some delay in lodging the FIR, that is adequately explained by the fact that the parties tried to settle the matter, and even otherwise, in spite of the delay in registration of the FIR, it has not impacted the injuries suffered as per the Provisional and Final MLCs.

8. Apart from the FIR, it is the statement of the injured himself that nominates the applicant/accused as the co-offender. Thus, far there is nothing to doubt that statement, nor to show that the arrest of the applicant/accused being sought for investigation is malafide which remains the primary test for the grant of pre-arrest bail.

9. For the foregoing reasons, the Applicant/accused Muhammad Usman s/o Allah Warrayo has not made out a case for pre-arrest bail. Hence, the ad-interim pre-arrest bail granted to him is/was recalled, and consequently, the pre-arrest bail application is/was dismissed vide my Short Order dated 24.11.2025.

10. Needless to mention that the observations made herein are merely tentative and shall not be relied upon by the parties or by the trial Court and shall not influence the learned trial Court at the time of final decision based on merits after recording of evidence.

11. The above are the reasons for my short order dated 24.11.2025.

JUDGE

Asif

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[1] *Rana Muhammad Arshad v. Muhammad Rafique* (PLD 2009 SC 427).