HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Bail Application No.S-1207 of 2026

Applicant:	Awais through Mr. Meer Ahmed Mangrio, Advocate along with Mr. Aroon Kumar, Advocate.
Respondent:	The State through Mr. Shawak Rathore, Deputy Prosecutor General, Sindh.
Complainant:	Ali through Ms. Neelam Meer Mehrani, Advocate.
Date of hearing:	02.11.2026.
Date of order:	02.11.2026.

O R D E R

MUHAMMAD HUMAYON KHAN, J. - Through the instant application, Awais son of Jummo seeks post-arrest bail in Crime No. 03/2026 of Police Station Bola Khan, District Jamshoro, registered for offences punishable under sections 302, 109, 504 and 34, P.P.C. His previous application for bail was dismissed by the learned Additional Sessions Judge-II, Jamshoro, on 13.08.2026.

2. Briefly, the prosecution case is that, in the backdrop of a previous dispute, on 02.02.2026 the applicant Awais, armed with a hatchet, along with Seengar, allegedly armed with a gun, and Rabnawaz alias Raboo confronted Rehmatullah. Upon the alleged exhortation of Rabnawaz to kill the victim, Awais inflicted a hatchet blow upon the victim's left arm near the elbow, while Seengar discharged his firearm at the abdomen. Abdul Razaque and Roshan are cited as eyewitnesses. Rehmatullah was taken for treatment and expired on 03.02.2026; the FIR was recorded on 04.02.2026.

3. Learned counsel for the applicant submits that pre-existing enmity supplies a motive for false involvement; the delay of approximately two days in reporting the incident affords room for deliberation; the post-mortem and injury documents differ from the ocular allegation regarding the number and nature of wounds; and the left-arm injury attributed to the applicant is on a non-vital part and is not shown to have caused death. Learned counsel further points to non-recovery of the hatchet, the recorded absence of rigor mortis and lividity, the medical notation regarding the interval since death and the grant of bail to a co-accused. Reliance has principally been placed on RESHAM KHAN and another v.

The STATE through Prosecutor General, Punjab, Lahore and another (2021 SCMR 2011).

4. The learned Deputy Prosecutor General opposes the application, maintaining that the applicant has been assigned an unmistakable role of causing an injury to the deceased; that the injury documents contain wounds in the very region identified by the witnesses; and that the concerted attack and accompanying firearm injury furnish, at this preliminary stage, grounds for examining the applicant's participation in the light of section 34, P.P.C.

5. Learned counsel for the complainant likewise resists bail. According to her, the applicant is not similarly placed with the co-accused whose role is confined to instigation; the injured was undergoing treatment, and the intervening death, post-mortem and burial explain the reporting interval. She submits that the remaining medical questions may be resolved through the evidence of the medical officer and places reliance on ***MUHAMMAD ATIF v. The STATE and another (2024 SCMR 1071) and MAZHAR IQBAL v. THE STATE and another (2010 SCMR 1171).***

6. I have heard the learned counsel and examined the material referred to at the hearing. Since section 302, P.P.C. is punishable with death or imprisonment for life, the accusation, if reasonably supported, falls within the prohibitory clause of section 497 (1), Cr.P.C. That fact does not, however, dispense with a judicial appraisal of the actual material against this particular applicant. The distinction is between "reasonable grounds" for believing his involvement and circumstances which call for "further inquiry" under section 497 (2), Cr.P.C.; mere gravity or the recital of an offence is insufficient. This is the approach explained in SALMAN MUSHTAQ and others v. The STATE through P.G. Punjab and another (2024 SCMR 14) and, in the context of a murder allegation under sections 302 and 34, P.P.C., in GHAZI ARAB v. The STATE (2025 SCMR 1967). The examination at this stage is tentative, not a determination of guilt.

7. The applicant is not implicated merely through his presence in the company of others or through a general allegation. The FIR assigns to him a particular act: striking the left arm of the deceased near the elbow with a hatchet. The ocular version is attributed to named eyewitnesses, Abdul Razaque and Roshan. The medical papers referred to in the impugned material show wounds in the left upper-arm/elbow region, while the injury memo also notes injuries to the left arm. This affords

limited support concerning the site and existence of an arm injury; it does not, standing alone, identify the assailant or finally establish the kind of weapon used. The distinction between medical evidence as confirmatory of injuries and substantive evidence as to identity has been emphasized in ***Hashim Qasim v. The State (2017 SCMR 986).*** On the present tentative record, therefore, the eyewitness attribution remains material, but its medical and forensic reliability is expressly left open to trial.

8. The submission that the applicant's individual blow was not fatal has substantial relevance, but is not determinative in isolation. Section 34, P.P.C. does not presume a common intention from mere association, possession of arms, or simultaneous presence; it requires participation in a criminal act in furtherance of a shared intention, which may be inferred, where justified, from the surrounding conduct. In BASHIR AHMED v. The STATE (PLD 1988 SC 86), the Supreme Court cautioned against equating similar individual intentions with a legally established common intention. Applying that caution here, the material goes beyond an accidental gathering: the accused are alleged to have arrived armed in the setting of an earlier dispute, one accused exhorted the killing, the applicant inflicted a blow upon the very person who immediately received the abdominal firearm shot, and the assailants allegedly acted together and left together. These circumstances furnish a *prima facie* basis to investigate the operation of section 34 against the applicant; whether any prior or contemporaneously formed meeting of minds is eventually proved remains strictly for the trial Court.

9. The relevance of an injury inflicted on the deceased, as distinct from an injury inflicted upon another prosecution witness, is illustrated by ***MUMTAZ HUSSAIN and five others v. The STATE (1996 SCMR 1125)***. The Supreme Court refused bail to the three petitioners alleged to have caused injuries to the deceased but allowed bail to other petitioners who, although armed, were accused only of causing simple blunt injuries to prosecution witnesses with the reverse sides of weapons, because their sharing of the common intention to kill required further inquiry. The instant allegation places Awais in the former, not the latter, factual category: the arm injury is attributed to the person who died, during the same episode in which the fatal shot was allegedly fired. Similarly, in ***ALLAH DEWAYO SHAHANI v. The STATE through Prosecutor General, Sindh (2023 SCMR 1724)***, bail was declined notwithstanding that the applicant's assigned firearm injury was to the deceased's palm. That case

arose under section 149, P.P.C., whose ingredients are different from section 34; it is cited only to show that the non-fatal seat of an accused's alleged individual injury is not automatically decisive when the overall participatory allegation is substantial.

10. The medical objections require closer attention. The post-mortem documents are stated to contain an abdominal entry and exit wound, left-arm wounds, sutures and a laparotomy incision following hospital treatment. It would therefore be unsound to count each recorded wound or surgical mark as if each necessarily reflected a separate blow alleged in the FIR. Conversely, the description of the arm wounds as "lacerated" cannot be treated as medical confirmation of a sharp-edged hatchet strike: weapon compatibility is a live question requiring the medical officer's explanation. The absence of recorded rigor mortis and lividity, coupled with the medical reference to a six-hour interval, likewise calls for clarification in the light of the treatment and the date of death. None of those objections is disregarded; they must be assessed together with the contemporaneous injury record, the abdominal firearm wound and the account of intervening treatment. On this record they do not establish a demonstrable, irreconcilable medical contradiction sufficient by itself to displace the specific assault allegation at the bail stage.

11. In ***RESHAM KHAN and another v. The STATE (2021 SCMR 2011),*** relied upon by the defence, the Supreme Court found a material conflict between an account of shots from the front and entry injuries at the back, besides an exculpatory investigation founded on CCTV material and the absence of tangible incriminating evidence. The cumulative circumstances demanded further inquiry. The present case does not disclose any comparable investigative exclusion of Awais from the occurrence, while wounds are recorded at the very region of the left arm to which his individual act is assigned. *Resham Khan* [supra] is therefore fully respected as the governing method of composite, tentative appraisal, but its conclusion on the different evidence before that Court does not govern this factual situation.

12. The decisions in ***PUR BUX v. The STATE (2012 SCMR 1955)*** and ***NAZEER AHMED v. The STATE and another (2018 PLJ SC 601)*** have also been borne in mind because they illustrate why an alleged hatchet role must not be accepted mechanically. In *Pur Bux* [supra], the petitioner was accused of striking a rescuer, not the deceased, and the

Supreme Court noted a specific blunt-side/sharp-injury contradiction together with an inconsistency in the chronology of hospital admission and FIR registration. In *Nazeer Ahmed*, the medical description, the investigation finding that the petitioner was empty-handed and the grant of bail to an accused assigned a comparable injury cumulatively called for further inquiry. Here, by contrast, the alleged blow is to the deceased himself, its general site appears in the injury papers, and no exculpatory finding or equivalent parity material is shown. These precedents underscore the need to test the precise arm wound at trial; they do not compel bail solely because the weapon has not been recovered or the injury is non-fatal.

13. Nor is the delay between the alleged occurrence of 02.02.2026 and the FIR of 04.02.2026 immaterial. Delay must be scrutinized especially where the parties acknowledge an earlier dispute. The explanation advanced is that the injured required urgent treatment, including transfer to Karachi, succumbed on 03.02.2026 and was then brought back for medico-legal and burial arrangements. Importantly, an injury memo dated 02.02.2026 records police attention to the injured before the later FIR. At this tentative stage that contemporaneous circumstance lends some support to the chronology and weakens the inference that the entire occurrence was first devised on 04.02.2026. In ***MAZHAR IQBAL v. The STATE and another (2010 SCMR 1171)***, the Supreme Court explained that delay alone, where explained and accompanied by a specific, supported accusation, is not a sufficient basis to grant bail. The later decision in ***Ghazi Arab v. The State (2025 SCMR 1967),*** involving sections 302 and 34, P.P.C., applies the same approach to delay attributed to post-mortem and burial arrangements. The sufficiency and truth of the explanation remain open to examination at trial.

14. As to the principle of consistency, it is not enough that another person nominated in the same FIR has secured bail. In ***MUHAMMAD ATIF v. The STATE and another (2024 SCMR 1071),*** the Supreme Court held that parity depends on a composite comparison of the accusations and the material gathered during investigation, and not on an isolated comparison of names or allegations in the FIR. ***BAKHTI RAHMAN v. The STATE and another (2023 SCMR 1068)*** reiterates that differently attributed effective roles defeat parity. ***GHAZI ARAB (2025 SCMR 1967)*** applies that distinction in a murder bail matter. The co-accused relied upon here is

assigned instigation alone, whereas Awais is alleged to have actually injured the deceased. Indeed, ***QURBAN ALI v. The STATE and others (2017 SCMR 279)***, in which an accused assigned only a lalkara was admitted to bail, illustrates why the position of an alleged instigator can materially differ from that of an accused assigned a physical act against the deceased. The two cases are not shown to be substantially alike; the rule of consistency is consequently unavailable to the applicant.

15. The non-recovery of the hatchet is a circumstance favourable to the defence in evaluating the strength of the case, and no recovery or forensic match can be assumed. But the prosecution allegation here does not rest on recovery or a co-accused's confession: it rests, at this stage, on the specific eyewitness account and the recorded injury at the specified region, read with the alleged concerted attack. The earlier grudge may supply an argument for false implication, just as the prosecution may rely upon it as background; choosing conclusively between those competing inferences is not permissible at the bail stage. In ***ITBAR MUHAMMAD v. The STATE and others (2024 SCMR 1576)***, the Supreme Court reaffirmed the requirement of a tentative evaluation of the material in a murder case; ***SHOUKAT ILAHI v. JAVED IQBAL and others (2010 SCMR 966)*** likewise illustrates that a sufficiently supported accusation cannot be displaced through a selective, premature appreciation of disputed matters. Neither authority dispenses with examination of the deficiencies in this case, which have been specifically noted above.

16. A further comparison is afforded by ***ABU BAKAR SIDDIQUE alias MUHAMMAD ABU BAKR v. The STATE and others (2021 SCMR 540)***, where bail was granted to an accused who had not injured the deceased, was found by the investigating agency to have engaged only in aerial firing, and was similarly placed to an already bailed-out co-accused. None of those three decisive circumstances is established here. The present record more closely resembles the position in which a person is attributed a definite act of injury upon the deceased during a joint fatal assault. Nonetheless, the presence of medical questions and non-recovery means that the prosecution evidence must still withstand the full standard of proof at trial; the bail inquiry cannot be converted into an advance judgment of conviction.

17. Upon evaluating the defence objections collectively rather than separately, I am unable to conclude that the case has crossed into further

inquiry within the meaning of section 497 (2), Cr.P.C. The direct attribution of the hatchet blow upon the deceased, the medical documentation of injury in the alleged region, and the circumstances from which a shared intention may tentatively be inferred provide reasonable grounds connecting the applicant with the offence punishable under section 302 read with section 34, P.P.C. The Court does not attribute the fatal abdominal gunshot to Awais individually, does not treat the medical report as proof of his identity, and does not presume the common intention conclusively established. The present conclusion is confined to the threshold of bail under section 497, Cr.P.C. As emphasized in ***SHER MUHAMMAD v. The STATE (2008 SCMR 1451)*** and ***GHAZI ARAB (2025 SCMR 1967),*** the concession of bail in a murder case within the prohibitory clause is not justified where the available material furnishes reasonable grounds and no statutory ground warranting release is made out.

18. For the foregoing reasons, instant Criminal Bail Application is **dismissed**. All observations made herein are tentative and have been recorded exclusively for deciding the question of bail. The learned trial Court shall assess every witness, the medical and treatment record, the delay, the alleged common intention, and the remaining evidence independently, without being influenced by anything stated in this order. Nothing herein shall preclude consideration of any fresh application on a legally sustainable, subsequent ground in accordance with law.

JUDGE

Abdullah Channa/PS