

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Crl. Bail Application No.S-541 of 2025

Applicant: Fayyaz son of Ali Hassan Otho, through
Mr. Ashique Hussain D. Solangi, advocate.

For the Complainant: Mr. Ghulam Rasool Mallah, Advocate.

For the State: Ms. Sana Memon, Assistant P.G.

Date of hearing: 26-08-2025

Date of Order: 26-08-2025

ORDER

Jan Ali Junejo, J. – The applicant/accused has approached this Court through the instant application under Section 497, Cr.P.C., seeking the concession of post-arrest bail in Crime No.03 of 2025, registered at Police Station Mahi Otho @ Karampur for offences under Sections 302, 114, 120-B, 504, 148, 149, and 337-H(ii), P.P.C. It is on record that the applicant earlier sought the same relief before the learned Additional Sessions Judge, Sehwan, where his bail plea was declined vide order dated 09.05.2025. Having remained unsuccessful before the Court of first instance, the applicant has now invoked the jurisdiction of this Court for grant of bail.

2. The prosecution case, as emerging from the FIR lodged by complainant Meer Hazar Khan on 23.03.2025, is that on the day of occurrence at about 10:00 a.m., the complainant along with his father Ali Hassan, maternal uncle Saddam Hussain, and cousin Fida Hussain proceeded towards their disputed agricultural land to restrain the accused party from harvesting the standing wheat crop. Upon arrival, they allegedly found accused Ali Akbar, Hazoor Bux, Nizamuddin (all sons of Ali Muhammad), Ashique Ali (son of Ali Akbar), the present applicant Fayyaz (son of Ali Hassan), and four

unidentified persons armed with firearms. The FIR narrates that the accused persons abused and threatened the complainant party, and on instigation of accused Ali Akbar, co-accused Hazoor Bux fired upon Ali Hassan, father of the complainant, causing him firearm injury on his right arm, who fell down and later succumbed to the injury. It is further alleged that the remaining accused, including the present applicant, resorted to aerial firing and prevented the complainant side from removing the injured. Subsequently, at about 7:00 p.m., the complainant approached the police station and lodged the FIR, resulting in registration of the present case.

3. Learned counsel for the applicant contends that the applicant has been falsely implicated due to admitted enmity arising out of land dispute. He argues that no specific injury is attributed to the applicant, as the fatal shot is alleged against co-accused Hazoor Bux alone. He further submits that the only role assigned to the applicant is of aerial firing, which does not attract the mischief of section 302, P.P.C. He points out that the FIR was lodged with unexplained delay of about nine hours, which suggests consultation and deliberation. He contends that nine accused including four unknown persons have been implicated with exaggerated allegations, which itself reflects mala fide. He finally argues that the case of the applicant, at the very least, requires further inquiry within the meaning of section 497(2), Cr.P.C., and prays that he be admitted to post-arrest bail.

4. Learned counsel for the complainant, on the other hand, contends that the applicant was specifically nominated in the FIR with active participation. He argues that the applicant, while armed, resorted to aerial firing and obstructed the complainant party from rescuing the injured, thereby facilitating the commission of murder. He submits that in view of sections 149 and 120-B, P.P.C., the applicant is vicariously liable for the death of the

deceased, and contends that the heinousness of the offence does not warrant concession of bail.

5. Learned A.P.G. for the State also opposes the plea for bail. She contends that the applicant was part of the unlawful assembly, armed with firearm, and his role of aerial firing facilitated the principal act. She argues that his presence at the crime scene and active participation negate any plea of false implication. She submits that sufficient material exists on record connecting the applicant with the commission of the offence, and therefore prays for dismissal of bail.

6. I have considered the submissions advanced by the learned counsel for the applicant, the learned counsel representing the complainant, as well as the learned A.P.G. for the State. I have also carefully examined the available record, keeping in view the settled principle that only a tentative assessment is permissible at the bail stage. A perusal of the FIR reveals that the fatal shot has been specifically attributed to co-accused Hazoor Bux. No firearm injury to the deceased or to any member of the complainant party has been attributed to the present applicant. The role assigned to him is confined to aerial firing and his presence at the place of occurrence. It is a well-settled principle, consistently reiterated in a catena of judgments of the superior courts, that mere presence at the crime scene, without active participation or attribution of a specific role in causing the death of the deceased, does not by itself suffice to bring an accused within the ambit of Section 302, P.P.C. Likewise, a general allegation of aerial firing, in the absence of any corresponding injury, cannot on its own attract liability under the said provision unless there is credible, independent, and corroborative material establishing that the accused shared the common intention with the principal assailant. Reference may be made to the case of *Bashir Ahmed and others v. The State and another (2022 SCMR 1187)*, wherein the Honourable Supreme Court of Pakistan was pleased to

hold that: *“The alleged criminal act should be in furtherance of common intention and not the common intention simpliciter. Mere presence of an accused with an accused who commits the crime would not constitute his common intention unless there is an evidence referring to the criminal act of that accused committed in furtherance of common intention with the other accused”*. Emphasis supplied.

7. Perusal of the record further reflects that the incident is alleged to have occurred at about 10:00 a.m., whereas the FIR came to be registered at 7:00 p.m., involving an unexplained delay of approximately nine hours. The unexplained delay in setting the law into motion not only casts serious doubt upon the veracity of the prosecution’s case but also constitutes a substantial ground for bail, as the possibility of deliberation, consultation, and false implication cannot be ruled out. In the present matter, such unexplained delay prima facie indicates that the prosecution story was formulated after due deliberation, thereby diminishing the evidentiary value of the FIR at the bail stage, in light of the dictum laid down by the Honourable Supreme Court of Pakistan in the case of ***Abdul Rehman alias Muhammad Zeeshan v. The State and others (2023 SCMR 884)***, wherein it was observed that: *“The crime report was lodged after an inordinate delay of five days for which not even a single word has been put forward by the complainant. The delayed registration of FIR prima facie shows deliberations and consultation on the part of the complainant”*.

8. The record further shows that as many as nine accused have been implicated, including four unknown persons. Such wide-scale nomination of both named and unidentified persons prima facie reflects an element of exaggeration on part of complainant. It is a well-settled principle that when the number of accused is unnecessarily increased, courts must exercise greater caution in order to separate the real culprits from those falsely or casually roped in. This becomes all the more significant where the role of the accused is confined to general allegations without specific attribution of a fatal injury. In

the present case, the material on record does not directly connect the applicant with the fatal act of firing which resulted in the death of the deceased. The only role assigned to him is of aerial firing and obstructing rescue. The Hon'ble Supreme Court has consistently held that generalized allegations of aerial firing, without any corresponding injury, do not, by themselves, bring the case within the ambit of Section 302, P.P.C. unless supported by independent and corroborative evidence. In such circumstances, when possibility of false implication exists, the accused is entitled to benefit of doubt at bail stage in terms of Section 497(2), Cr.P.C. It must also be borne in mind that at the stage of bail only a tentative assessment of the available material is permissible. The Court is not required to make a roving inquiry or undertake deeper appreciation of evidence, which is the domain of trial. Where, as here, reasonable doubt arises about the nexus of the applicant with the principal act, his case squarely falls within the ambit of "further inquiry" envisaged by Section 497(2), Cr.P.C. The applicant is admittedly a government employee, resident of the locality, and has strong roots in society. The prosecution has not been able to point out any likelihood of his absconding or tampering with the prosecution evidence. In the absence of such apprehension, his further incarceration would serve no useful purpose and would amount to undue hardship.

9. In view of the above discussion, I am of the considered view that the case of present applicant requires further inquiry into his guilt. Therefore, he is entitled to concession of bail under Section 497(2), Cr.P.C. Accordingly, the instant bail application was allowed. Applicant Fayyaz son of Ali Hassan Otho was admitted to post-arrest bail in Crime No.03 of 2025 under Sections 302, 114, 120-B, 504, 148, 149, 337-H(ii), P.P.C., registered at P.S. Mahi Otho @ Karampur, subject to his furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand only) and PR bond in the like

amount to the satisfaction of the learned trial Court and these are the reasons of my short dated 26.08.2025. It is clarified that observations made hereinabove are tentative in nature and shall not prejudice the case of either party at trial.

JUDGE