

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No.S-314 of 2025
(Shahban Ali Burdi and another Vs. The State)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
-----------------	-------------------------------

Hearing of post-arrest bail

- 1. For orders on office objections at flag ‘A’
- 2. For hearing of bail application.

ORDER.
05-05-2025.

Mr. Muhammad Akram Jhamat advocate for applicant/accused.
Mr. Muhammad Hanif Maitlo, advocate for complainant.
Syed Sardar Ali Shah Rizvi Additional P.G for the State.

Ali Haider ‘Ada’, J. Through this bail application, the applicants/accused namely, Shahban Ali and Allah Wassayo seekpre-arrest bail in Crime No.29 of 2025, registered under section 384, 435, 427 PPC at Police Station Pir-jo-Goth as such incident was reported on 13-03-2025, while the date of incident is 02-01-2025. Prior to this bail application, the applicants approached before learned Sessions Judge Khairpur for same relief as the matter was transferred to learned Additional Sessions Judge-III Khairpur, who vide order dated 29-03-2025 declined their bail application.

2. The case of the prosecution is that the complainant received a phone call on 30-12-2024 from an unknown number demanding extortion money. Upon his refusal to comply, on 02-01-2025, an incident occurred wherein the complainant’s wood and other property were set on fire lying at his land. Subsequently, he received another call from the same number, wherein the caller admitted to having committed the act due to non-payment of the extortion amount. Thereafter, on 03-03-2025, the complainant again received a call from the same

number, stating that his standing wheat crop had been damaged, which upon inspection, was found to be true. The complainant then made efforts to trace the number and it was revealed that the accused persons namely Nadir Ali, Shahban (applicant), Allah Wassayo (applicant), Bharo Jatoi, and one unidentified person were involved in the commission of the alleged acts. Consequently, the complainant approached the concerned police station and lodged the FIR.

3. Learned counsel for the applicants/accused contends that the alleged incident is unseen and that no specific or overt act has been attributed to the applicants in the FIR. He further submits that there is an unexplained delay of nearly two months in lodging the FIR, which creates serious doubts. It is also argued that during the course of investigation, the mobile number from which the complainant allegedly received extortion calls was traced and it does not belong to the present applicants, thereby placing their case on a stronger footing for the grant of post-arrest bail.

4. Conversely, learned counsel for the complainant opposes the bail application on the ground that the applicants are prima facie involved in the commission of the offence. He submits that the Call Data Record (CDR), collected during the investigation, establishes that the applicants were in regular telephonic contact with co-accused Nadir Ali and Bharo Jatoi. He further contends that the number used to make the extortion calls was traced to the name of co-accused Nadir and Bharo, thereby connecting the present applicants through telephonic communication and shared intent. Hence, it is submitted that the applicants are not entitled to the concession of bail.

5. On the other hand, the learned Additional Prosecutor General for the State opposes the bail application and submits that the further statement of the

complainant was duly recorded by the police on 08-04-2025, in which additional facts were brought on record. It is further contended that the father of the present applicant, namely Mehmood, was also nominated in the same FIR. Upon tracing the call records, it was revealed that the present applicants remained in contact with the principal accused, thereby establishing their active involvement in the alleged offence. In light of these circumstances, the applicants are not entitled to the concession of pre-arrest bail.

6. Heard and perused the material available on record.

7. Upon perusal of the record, it transpires that the alleged offence comprises three distinct episodes: firstly, on 30-12-2024, the complainant purportedly received a call from an unidentified number demanding extortion, which he did not report to the police at the relevant time; secondly, on 02-01-2025, his wood and other materials lying on his agricultural land were allegedly set on fire; and thirdly, on 03-03-2025, his wheat crop was damaged. It is noteworthy that the complainant refrained from promptly lodging an FIR in respect of any of these incidents and only disclosed the names of the accused after an alleged trace of the phone number. Such conduct raises serious concerns, as under the established principles of criminal jurisprudence, the initiation of investigative proceedings cannot be undertaken solely on a verbal assertion without a formal registration of the crime. This approach is clearly inconsistent with the procedural safeguards enshrined in the criminal justice system.

8. Furthermore, the FIR has been lodged with considerable delay for which no plausible explanation has been furnished by the complainant, thereby creating doubt with regard to the veracity of the prosecution's version. In this regard, reliance is placed upon the case of *Mazhar Ali vs. The State* (2025 SCMR 318).

9. Now adverting to the aspect of CDR and tracing of the number, it is an admitted position of the prosecution that the cell number from which the complainant allegedly received extortion calls does not belong to the present applicants. The only alleged nexus is that the applicants remained in contact with co-accused persons, who are said to be the users of the impugned number. However, it is quite astonishing that during investigation, the Investigating Officer failed to secure or seize the cell phones of the present applicants, which is a mandatory requirement under Rule 25.2 of the Police Rules, 1934, in order to preserve and examine such evidence for establishing any alleged communication between co-accused persons. This material omission creates serious doubt on the prosecution version. Furthermore, CDR (Call Detail Record) alone is not a conclusive piece of evidence unless duly corroborated by independent proof. This legal proposition is fortified by the judgments rendered in *Naveed Sattar vs. The State* (2024 SCMR 205), *Syed Safeer Hussain vs. The State* (2025 MLD 194), and *Muhammad Imran vs. The State* (2025 MLD 291). For further elaboration, Rule 25.2 of the Police Rules, 1934, Chapter XXV, which deals with the procedure for investigation, is reproduced as under:

25.2 Power of Investigation Officers. (I) The powers and privileges of a police officer making an investigation are detailed in sections 160 to 175, Criminal Procedure Code. An officer so making an investigation shall invariably issue an order in writing in Form 25.2 (I) to any person summoned to attend such investigation and shall endorse on the copy of the order retained by the person so summoned the date and time of his departure from, the place to which he is summoned. The duplicate of the order shall be attached to the case diary.

(2) -----

(3) -----

10. This position is further elaborate in the judgment of *Maqbool Ahmed v. Station House Officer, Police Station Changa Manga and others* (1999 PCrLJ 1198), wherein held that: "7." A perusal of the aforesaid Rule 25.2

of the Police Rules 1934 has made out that the Investigation Officer has to discover the actual facts of the case. He can pass the order to require the attendance of any person during the investigation and for that matter the notice can be and has to be issued to the prosecution witnesses and even to the accused according to the Form, No, 25.2(I) of the Police Rules 1934 provided therein. In the aforesaid Form 25.2(I) the word "person" instead of the "prosecution witness" or the "accused" has been used which projects that the version of the prosecution and the accused has to be recorded and by practically joining them in the investigation to reach at the truth."

11. The incident reported in the FIR is based on an unseen occurrence, and there is no direct or ocular evidence available on record to establish the active involvement of the present applicants in the commission of the alleged offence. In such circumstances, the case against the applicants becomes one of further enquiry as contemplated under Section 497(2) Cr.P.C., warranting the extension of the benefit of bail. Reliance in this regard is placed upon the cases in *Muhammad Ibrahim and another vs. The State (2020 PCr.LJ Note 90)* and *Sanaullah Khuharo and others vs. The State (2020 PCr.LJ Note 59)*.

12. The principal as laid down by the Honourable Supreme Court in the case of *Saeed Ahmed and another vs. The State (PLD 2024 SC 1241)*, it was held that:

On the basis of tentative assessment of the material so far available on record the case against the petitioners falls within the ambit of further enquiry as well. In the cases of Salman Mustaq vs The State, Ahtisham Ali vs The State, Fahad Hussain vs The State , Gulshan Ali Solangi vs The State, Muhammad Sadiq vs The State , Rana Muhammad Arshad vs Muhammad Rafique , apart from the grounds of malafide , ulterior motive and abuse of process of law , the accused were granted pre-arrest bail on the ground of further enquiry on the basis of tentative assessment of the material available on record.

13. In view of the foregoing discussion, I am of the considered opinion that the applicants/accused have succeeded in making out a case for the confirmation of pre-arrest bail. Accordingly, the ad-interim pre-arrest bail already granted to the applicants vide order dated 16-04-2025 is hereby confirmed.

14. Needless to mention, the observations made herein above are purely tentative in nature and shall not prejudice the trial Court, which shall decide the case strictly on the basis of evidence brought on record and in accordance with law.

15. The bail application stands disposed of in the above terms.

J U D G E

Ihsan/PS.