

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No.S-668 of 2024  
(Zafarullah alias Ali Raza Vs. The State)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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For Order on Office Objection at Flag-A

For hearing of bail application.

**ORDER.**  
15-05-2025.

Mr. Shahid Ali Memon and Ms. Rizwana Parveen Memon,  
Advocate for applicant.  
Mr. Khaleeq-ur -Rahman Shaikh, Advocate for complainant.  
Mr. Mansoor Ahmed Shaikh, Deputy P.G for the State.

*Ali Haider ‘Ada’,J:-* Through this post-arrest bail application, the applicant/accused Zafarullah alias Ali Raza son of Gul Hassan, by caste Magsi, seeks his release on bail in Crime No. 129 of 2023, registered under Sections 302 and 34, PPC, at Police Station Ranipur. Prior to approaching this Court, the applicant moved a post-arrest bail application before the learned Sessions Judge, Khairpur, which was entrusted to the learned Additional Sessions Judge, Gambat; however, the same was dismissed.

2. Briefly stated, the facts of the case are that the brother of the Complainant, namely Ghulam Mustafa, contracted a love marriage with Mst. Amna, daughter of Khuda Bux Magsi, as Khuda Bux Magsi reportedly caused annoyance. On 24-08-2023, at about 4:00 p.m., the complainant along with Ghulam Mustafa and others were present when the accused persons, namely Asif son of Khuda Bux, Ali Raza son of Gul Hassan and Babul son of Moharram, allegedly arrived and opened fire upon Ghulam Mustafa, who sustained fatal injuries and died on the

spot. After the funeral rites, the complainant approached the police on the following day, i.e., 25-08-2023 and lodged the FIR.

3. After the registration of the FIR, on 16-09-2023, the supplementary statement of Complainant was recorded by the Investigating Officer, wherein he stated that the accused named as Ali Raza in the FIR is also known by the name of Zafarullah, as Ali Raza, whereas his actual name is Zafarullah alias Ali Raza.

4. During the course of proceedings of this bail application, a report was called from NADRA. In compliance, Mr. Safdar Kamal Ansari, Advocate, appeared on behalf of NADRA and submitted a report dated 28-04-2025, issued by the Assistant Director (V&R), NADRA, wherein it is categorically stated that Zafarullah (present applicant), bearing CNIC No. 53302-4318965-7 and Ali Raza, bearing CNIC No. 53302-9187231-7, are two distinct individuals as per official NADRA records.

5. Learned counsel for the applicant contends that the present applicant Zafarullah has been falsely implicated in the instant case with ulterior motives by portraying him as accused Ali Raza. He submits that Zafarullah and Ali Raza are two distinct individuals, though both are sons of Gul Hassan from different mothers, Zafarullah being the son of Mst. Husna and Ali Raza being the son of Mst. Phulan Bibi. It is further argued that their father, Gul Hassan, had contracted two marriages. The name of applicant Zafarullah surfaced only in the supplementary statement of the complainant, which was recorded with a delay of 21 days after the registration of FIR. The learned counsel points out that the applicant is a co-villager and belongs to the same caste, but due to existing enmity and the fact that the applicant is employed in the Levies Force, Baluchistan, he has been falsely roped in. He argues that, according to local social practices, opponents who are settled in life are often falsely implicated by

either party. He, therefore, prays for grant of post-arrest bail to the applicant. In support of his contentions, he places reliance upon the cases of *Salman Zahid vs. The State* (2023 SCMR 1140), *Lal Marjan and another vs. Islam Gul and others* (2021 SCMR 301), and *Abid Ali alias Ali vs. The State* (2011 SCMR 161).

6. On the other hand, learned counsel for the complainant has opposed the bail application, contending that the applicant is, in fact, Ali Raza, who is deliberately concealing his true identity by presenting himself as Zafarullah. He submits that the applicant is known as Zafarullah alias Ali Raza and there is no question of two distinct individuals as alleged. It is argued that the NADRA report has been manipulated in connivance with the applicant to create a false impression of mistaken identity. The learned counsel further submits that the applicant alongwith other accused have been specifically nominated in the FIR with a active role of having fired upon the deceased. Therefore, he is not entitled to the relief of bail. In support of his submissions, reliance is placed upon the cases of *Itbar Muhammad vs. The State and others* (2024 SCMR 1576), *Rashid Ramzan vs. The State and others* (2022 SCMR 2111), *Allah Dewayo Shahani vs. The State through Prosecutor General Sindh* (2023 SCMR 1724R), and *Rehman Ullah alias Insaf vs. The State and others* (2020 SCMR 357).

7. Conversely, the learned State Counsel has opposed the grant of bail on the ground that, in order to ascertain whether the applicant and Ali Raza are in fact two distinct individuals, the Investigating Officer should obtain fingerprints of both persons and send the same for forensic analysis. It is argued that until such examination is conducted to determine the actual and real culprit, the concession of bail should not be extended to the applicant.

8. Heard learned counsel for the parties and perused the material available on record.

9. First of all, it is firmly entrenched principle of criminal jurisprudence that the merits of the prosecution case may be tentatively evaluated at the bail stage, without delving into a deeper appreciation of evidence. In this regard, authoritative guidance can be drawn from the decisions of the Honorable Supreme Court in *Ch. Saeed Ahmed Khalid v. The State* (2023 SCMR 1712), *Muhammad Imran v. The State* (2023 SCMR 1152), and *Javed Iqbal v. The State* (2022 SCMR 1424).

10. In light of this aspect and before reaching a conclusion on the issue of the two different identities, it is on record that the name of the present applicant, Zafarullah, was introduced in the prosecution case on 16-09-2023, when the supplementary statement of complainant was recorded by Investigation Officer after a delay of 21 days following the FIR, without any explanation. Both the applicant and the complainant belong to the same locality and have admitted enmity between them. The evidentiary value of such a supplementary statement is to be assessed during the trial. In this regard, reliance is placed on the unreported judgment of the Honourable Supreme Court in *Ejaz Ahmed Chaudhry v. The State through P.G, Punjab and others* (Crl.PLA No.117 of 2024, decided on 02.05.2025), wherein it has been held that;

4. After hearing learned counsel for the petitioner as well as the learned Special Prosecutor, Punjab we have perused the available record which transpires that the petitioner was not nominated in FIR No. 103/2023 lodged with PS Sarwar Road, District Lahore on 12th May 2023 for the occurrence of 9th May 2023. The petitioner was implicated by the complainant in his supplementary statement dated 10th June 2023 on the basis of tweets/audio/video clips on social media. The admissibility, relevancy and evidentiary value of the supplementary statement of the complainant as well as the alleged tweets/audio/video clips on social media are yet to be

*determined at the trial which has not yet concluded despite lapse of almost two years. According to the settled principles of law, bail cannot be withheld as mere punishment.*

11. It is also on record that the applicant was arrested on 01-10-2023. Since no recovery, including the crime weapon, has been effected from the applicant, which also supports the entitlement of applicant to bail. Reliance is placed upon the case of *Zeeshan vs The State 2024 SCMR 1716*.

12. Regarding the NADRA report, it is established that accused Ali Raza and the applicant Zafarullah are stepbrothers from different mothers and thus two distinct individuals, contrary to the prosecution's claim that they are the same person. The Investigation Officer failed to conduct an identification parade before the Magistrate, neglecting to have the complainant identify the applicant properly instead reliance was placed solely on the complainant's supplementary statement equating Zafarullah with Ali Raza, which is improper and raises concerns of partiality in the investigation. Despite NADRA submitting its report to the SHO, no corrective action was taken, suggesting possible influence by the complainant on the investigation process.

13. It is pertinent to highlight that, according to the FIR itself, the complainant approached the Police Station on the very day of the incident and obtained a letter for the post-mortem examination of the deceased. However, despite being present at the Police Station, the FIR was not lodged on the same day and was registered only the following day. Such delay in lodging the FIR, especially in a case involving a capital offence, raises serious concerns about the possibility of deliberation or afterthought in nominating the accused. At this stage, this unexplained delay cannot be overlooked and must be viewed with due legal scrutiny. Reliance is placed on the case of *Mazhar Ali vs. The State (2025 SCMR 1424)*.

14. It is a well-established principle in Criminal Law that even the slightest doubt should be resolved in favor of the accused, not only during the trial but also at the bail stage. When the prosecution's case is questionable or requires further investigation under Section 497(2) Cr.P.C., the accused is entitled to bail. Absolute certainty is not required at this stage; a reasonable doubt about the accused's guilt must be construed in favor of their liberty. This principle has been consistently reaffirmed by the Honourable Supreme Court in several judgments, including *Salman Zahid vs. The State through PG Sindh* (2023 SCMR 1140), *Fahad Hussain vs. The State* (2023 SCMR 364), *Muhammad Eijaz vs. The State* (2022 SCMR 1271), and *Muhammad Arshad vs. The State* (2022 SCMR 1555).

15. 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."*

16. In view of the foregoing discussion, it is evident that the applicant/accused has made out a case within the ambit of sub-section (2) of Section 497, Cr.P.C. The material on record indicates that the case requires further inquiry regarding the guilt of the applicant. Consequently, the applicant is admitted to bail subject to furnishing a surety in the sum of Rs. 100,000/- (One Hundred Thousand Rupees Only) along with a personal bond of a like nature to the satisfaction of the learned trial Court.

17. Needless to mention, the observations made herein above are purely tentative in nature, confined to the disposal of the present bail application and shall not prejudice or influence the learned Trial Court in deciding the case on its merits.

*J U D G E*

*Ihsan/PS.*

