

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Cr. Bail Application Nos. S-375 of 2025

Muhammad Mansoor Awan vs. The State

Cr. Bail Application No. S-487 of 2025

Danish Raza vs. The State

Applicants : Muhammad Mansoor Awan, through Mr. Muhammad Ali Napar, Advocate
Danish Raza Bhatti, through Syed Murad Ali Shah, Advocate

Complainant : Tarique Akbar Shar, through Mr. Ghulam Shabbeer Shar, Advocate

The State : Through Syed Sardar Ali Shah Rizvi, Additional Prosecutor General

Date of hearing : 04.08.2025
Date of order : 13.08.2025

ORDER

KHALID HUSSAIN SHAHANI J:- By this single order, I intend to dispose of two separate applications arising out of the same case bearing crime No. 113/2025, registered at Police Station Mirwah, District Khairpur, for offences under Sections 302, 120-B, 147, 148, 149, 109 & 34 PPC.

2. Applicant Muhammad Mansoor Awan, seeks pre-arrest bail after his initial application was dismissed by the learned Additional Sessions Judge-I/MCTC, Khairpur, vide order dated 06.05.2025. Applicant Danish Raza, seeks post-arrest bail following the dismissal of his application by the same learned court, vide order dated 27.05.2025.

3. The crux of the prosecution case, as narrated in the FIR lodged by complainant Tarique Akbar Shar, is that on 09.04.2025 at about 07:00 pm, principal accused Niaz Badami took the complainant's cousin, Allah Dino @ A.D Shar (the deceased), on the pretext of resolving a prior dispute with applicant Muhammad Mansoor Awan. When the deceased did not return, the complainant party followed and, at about 09:00 pm, witnessed the principal accused Niaz Badami, Wagas, and Ahad brutally murdering the Allah Dino with sharp edged weapons. The FIR alleges that applicant Muhammad Mansoor Awan was the instigator of this entire incident. Applicant Danish Raza is

alleged to have been present at the scene, armed with a pistol, along with other co-accused who facilitated the commission of the murder.

4. Learned counsel for applicant Muhammad Mansoor Awan vehemently argued that the applicant is innocent and has been falsely implicated with mala fide intent. He contended that the sole allegation against the applicant is that of instigation, which is not supported by direct or corroborative evidence. He further submitted that the police's own press release suggests the motive for the murder was honor killing, which contradicts the complainant's version. He maintained that the essential ingredients to constitute an offence of instigation are missing and that the trial court dismissed the bail without appreciating the facts in their true perspective. In support of his contentions, he placed reliance on the cases reported as 2022 SCMR 881, 2025 PCrLJ 470, 2024 SCMR 985, and 2021 PCrLJ 394.

5. Learned counsel for applicant Danish Raza contended that the applicant has been falsely implicated and that no specific role has been attributed to him, other than his mere presence while armed with a pistol. He emphasized that the said pistol was not used in the commission of the offence, as the post-mortem report confirms that the cause of death was injuries from a sharp-edged weapon, with no firearm injuries found on the deceased. He argued that the incident occurred in the dark of night, making identification by motorcycle headlight doubtful. He concluded that the case against his applicant requires further inquiry. In support of his arguments, he relied upon the cases reported as 2018 PCrLJ 42, 2023 PCrLJ 24, 2018 PCrLJ 834, and 2019 PCrLJ 66.

6. Conversely, the learned Deputy Prosecutor General, assisted by the learned counsel for the complainant, staunchly opposed the grant of bail to both applicants. He submitted that both applicants are nominated in the FIR with specific roles in a heinous offence punishable with death, thus falling within the prohibitory clause of Section 497 Cr.P.C. He argued that Muhammad Mansoor Awan is the mastermind who instigated the brutal murder. To substantiate this, he referred to the statements of Mst. Shaheena (widow of the deceased) and Mst. Naziran (mother of the deceased), recorded under section 161 Cr.P.C. on 12.04.2025. In their statements, they have explicitly stated that prior to the incident, applicant Muhammad Mansoor had issued threats of dire consequences to the deceased for having spoken against him in the media, and

that the deceased had also informed them about receiving threatening WhatsApp messages from the said applicant. He further argued that applicant Danish Raza shared a common intention with the principal accused by being present and armed at the scene. He asserted that the trial court passed well-reasoned orders and that, at this stage, only a tentative assessment is required, which connects both applicants to the crime. He relied on the cases reported as 2008 SCMR 884, 2008 YLR 1544, and 2016 MLD 137.

7. I have heard the arguments from all sides and have meticulously perused the record with their able assistance.

8. It is a settled principle of law that at the bail stage, the court is not to conduct a detailed examination of the evidence, as that is the function of the trial court. The court is only to make a tentative assessment of the material on record to determine whether the applicant is entitled to the concession of bail.

9. Regarding the case of applicant Muhammad Mansoor Awan, the allegation against him is solely that of instigation. Section 107 PPC defines abetment as the act whereby a person abets the doing of a thing. The further interpretation states to instigates another to commit an offense; engages in a conspiracy with others for the commission of the offense if an act or illegal omission takes place in pursuance of that conspiracy; or Intentionally aids by an act or omission the commission of that offense. Instigation, in this context, is an active encouragement or prompting to commit the crime. The essential elements of abetment under Section 107 PPC include the act instigated or conspired to must be an offense under the law. The accused must have either instigated or conspired or aided in the commission of that offense. There must be a proximate link between the instigation and the commission of the offense, although the offense need not always be committed for abetment to be established if instigation is proven. The law recognizes instigation even if the offense is not ultimately committed, provided there is intent to promote the crime. This section thus captures both direct and indirect involvement in a criminal act. The contention of the learned DPG for the State that this conspiracy proves from the USB in which the messages of the applicant Mansoor Awan is available wherein he is issuing threats. On query of the Court, as to whether the said USB is given to investigation officer for seizing and forensic examination, to which learned DPG furnished a shabby reply after going through the police papers that though same is available with him but

neither sent for forensic analysis to determine its authenticity and genuineness nor its transcript prepared or produced to make part of the investigation process. More so, digital evidence such as that contained on USB drives has become increasingly relevant in criminal cases in Pakistan. However, the Supreme Court of Pakistan has clarified through jurisprudence that such digital evidence must meet strict forensic and procedural standards to be admissible and reliable.

10. It has been consistently held by the Honorable Supreme Court of Pakistan that a USB evidence must be subjected to a forensic analysis by an accredited forensic science agency to ensure it is genuine, untampered, and accurately represents its content. There must be clear, documented custody from recovery to production in court to exclude tampering. The source of the evidence and the person who recorded or possesses the USB must be produced to verify its authenticity. When a USB is neither forensically examined nor made transcript, part of the official investigation record with proper documentation like seizure or recovery memos, courts treat such evidence with suspicion or even declare it inadmissible, may draw adverse inferences against the prosecution for failing to meet evidentiary standards and consider the lack of forensic validation a violation of the accused's right to a fair trial under the Constitution. It also weakens the prosecution's case, particularly in bail proceedings, where the court looks for reasonable grounds rather than conclusive proof.

11. In a case where the accusation under Section 107 PPC hinges on alleged instigation proven through digital evidence on a USB device, failure to forensically examine the USB critically undermines the prosecution's evidence. Without authentic, verified evidence, claims of instigation become tenuous, especially when there is no direct or corroborative evidence beyond the unverified USB. Legal safeguards protect the accused's right to challenge unsubstantiated digital claims. Bail courts usually adopt a lenient view when evidence is procedurally defective or weak.

12. In case of *Ishtiaq Ahmed Mirza v. Federation of Pakistan* (PLD 2019 SC 675), the Honorable Supreme Court was pleased to establish 20-point criteria for USB and digital evidence admissibility, emphasizing forensic examination. Similarly, in case of *Yasir Ayyaz v. State* (2019 PLJ Cr.C 352) stressed that digital evidence like USB content is admissible only with proper forensic proof of authenticity and in case of *Sikandar Ali Lashari v. The State*

(2016 YLR 62), recognized denial of USB access and forensic proof as breach of fair trial rights. Simultaneously, Islamabad High Court in a ruling hold that USB evidence inadmissible where forensic protocols were ignored.

13. Coming back; the abetment requires clear instigation or aid; mere allegation without solid evidence, especially when the main digital evidence is unreliable, fails to meet this threshold. A USB device alleged to contain evidence of instigation under Section 107 PPC, but same has not been forensically examined or properly incorporated into investigation records, carries little to no evidentiary weight. Such evidence is susceptible to questions of authenticity and tampering, violates procedural and constitutional safeguards, weakens the prosecution's case on instigation and supports the argument for bail due to insufficient evidence. In sum, the law demands that claims under Section 107 PPC must be supported by admissible and credible evidence, and digital evidence like USBs must be forensically vetted to be credible. Failure to meet these standards calls into question the reliability of the evidence and undermines the prosecution's case.

14. Now moving to the merits of the case; the FIR itself is based on a prior altercation between the applicant and the deceased. While instigation is a serious allegation, its proof often requires a deeper appreciation of evidence, which can only be undertaken at the trial stage. There is no evidence on record to show that the applicant was present at the scene of the crime or participated in the physical act. The question of whether his alleged words or actions directly led to the commission of the murder is a matter that necessitates further inquiry. The general allegation of instigation, without more, often brings the case within the ambit of further inquiry.

15. As for applicant Danish Raza, he is alleged to have been present at the scene of the crime while armed with a pistol. However, it is an admitted fact, supported by the post-mortem report, that the deceased suffered no firearm injuries. The cause of death was incised wounds from a sharp weapon. The role attributed to Danish Raza is therefore distinguishable from that of the principal accused who are alleged to have inflicted the fatal blows. While his presence at the scene is a serious matter, the fact that he did not use his weapon and played no part in the fatal assault makes his case one of further inquiry to determine the extent of his liability and the existence of a common intention.

16. The prohibitory clause of Section 497 Cr.P.C. is not an absolute bar to the grant of bail, especially when the case of an accused person requires further inquiry. Based on the tentative assessment of the material available, I am of the considered view that both applicants have made out a case for the grant of bail.

17. For the foregoing reasons, both applications are allowed. The interim pre-arrest bail granted to applicant Muhammad Mansoor Awan is hereby confirmed on same terms and conditions with directions to join investigation/trial. Applicant Danish Raza shall be released on bail, subject to furnishing a solvent surety in the sum of Rs. 500,000/- (Rupees Five Hundred Thousand only) and a PR bond in the like amount to the satisfaction of the learned trial court. It is clarified that any observations made herein are tentative in nature and shall not influence the learned trial court during the trial of the case. The applications are disposed of in the above terms.

18. Office is directed to place a signed copy of this order in the captioned connected matter.

J U D G E