

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

CrI. Misc. Appln. Nos. D-23, 24 & 25 of 2022

**Before:**

**Mr. Justice Amjad Ali Bohio, J.**

**Mr. Justice Khalid Hussain Shahani, J.**

Applicant : Dileeper Kumar S/o Thanwal Das,  
Through Mr. Zuber Ahmed Rajput, advocate

Respondents : SIP Ashique Ali s/o Dhani Bux, Meerani (Ex-SHO of  
Police Station Salehpat) respondent in Cr. Misc.  
Application No.D-23/2022  
Through Mr. Sikander Ali Junejo, Advocate

Syed Inayat Hussain Shah @ Muhammad Ali s/o  
Wadhah Shah, respondent in Cr. Misc. Application  
No.D-24/2022,  
Through M/s Farooq H. Naek, Mehfooz Ahmed  
Awan, Farhan Ali Shaikh and Syed Qasim Shah,  
Advocates

Syed Ehsan Ali Shah s/o Noor Hussain Shah  
Resp. No.1 in Cr. Misc. Application No. D-25/2022  
Through Mr. Ali Ahmed Khan, Advocate

The State : Through Mr. Aftab Ahmed Shar, Addl. P.G

Date of hearing : 24.09.2025  
Date of short order : 24.09.2025  
Reasons recorded on : 26.09.2025

## **ORDER**

**KHALID HUSSAIN SHAHANI, J.—** These three Criminal Miscellaneous

Applications for cancellation of bail under Section 497(5) read with Section 561-A Cr.P.C, arise out of the case bearing Crime No.21 of 2021, for offences under Sections 302, 109, 120-B, 147, 148, 149 PPC read with Section 7 of Anti-Terrorism Act, 1997, registered at Police Station Salehpat. All these applications emanate from identical facts and challenge the same impugned order dated 29.03.2022, passed by the learned In-charge Judge of Anti-Terrorism Court No.1, Sukkur, whereby interim pre-arrest bail was confirmed to the respective respondents, this common order is being passed to dispose of all three applications together.

2. The genesis of these applications traces back to the murder of journalist Ajay Kumar Lalwani, son of complainant Dileep Kumar, who was professionally engaged in journalism and was affiliated with Sindhi and Urdu

channels. The deceased was actively involved in social welfare activities and was raising voice for the constitutional rights of poor people of Salehpat.

3. The material facts reveal that the deceased journalist was consistently writing in social and print media against the alleged corruption, misuse of powers, and embezzlement of funds by respondents Syed Inayat Hussain Shah (Ex-Chairman, Town Committee Salehpat) and Syed Ehsan Ali Shah (Ex-Vice Chairman, Town Committee Salehpat). When the deceased continued to expose their alleged illegal activities through media campaigns, the accused initially attempted to silence him through threats and managed to register fake FIRs against him and his brothers through their private persons. On 17.03.2021 at about 09:30 PM, while Ajay Kumar was getting his hair cut at Khalil Ahmed's saloon near Taxi Stand Salehpat, along with his father complainant Dileep Kumar, nephew Nathoo, and friend Naresh, armed assailants arrived on a white Corolla car and a 125cc motorcycle. The attackers, holding pistols, pointed them at the complainant and witnesses, asking them to remain silent, while one of them opened fire on Ajay Kumar with a 30-bore pistol, causing fatal injuries. The deceased succumbed to his injuries on 18.03.2021 at Civil Hospital Sukkur.

4. During investigation, principal accused Syed Raza Shah and Syed Jameel Hussain Shah were arrested, while respondents Syed Inayat Hussain Shah, Syed Ehsan Ali Shah, and SIP Ashique Ali Meerani were initially placed in Column No.2 of the challan. However, the learned trial court accepted the challan against all accused persons by joining the let-off accused. Subsequently, the respondents obtained pre-arrest anticipatory bail from the Anti-Terrorism Court, which was confirmed vide the impugned order dated 29.03.2022.

5. Mr. Zuber Ahmed Rajput, learned counsel for the applicant/complainant, advanced comprehensive arguments challenging the impugned order. He contended that the learned trial court erred in confirming

pre-arrest bail to the respondents without proper consideration of the material evidence available on record. The learned counsel emphasized that a serious criminal conspiracy was hatched by the respondents to eliminate the deceased journalist because he had exposed their corruption, misappropriation of government funds, mismanagement, and illegal acts against the poor public of Salehpat. He argued that the deceased refused to accept their status quo and rule over the land; therefore, he was murdered as a message to all journalists who dare to disclose illegal activities and corruption. Specifically regarding the case law, the learned counsel relied upon several landmark judgments

- 2022 SCMR 1299: The counsel emphasized the principles laid down by the Hon'ble Supreme Court regarding the grant of anticipatory bail and the need for exceptional circumstances to justify such extraordinary relief.
- PLD 1984 SC 192 (*Zia Hassan case*): The learned counsel drew attention to Page 194 of this judgment, which establishes that pre-arrest bail is an extraordinary remedy that should not be granted routinely and requires compelling circumstances.
- 2021 SCMR 449: The counsel particularly emphasized Page 451, which holds that an accused in a criminal case cannot be granted anticipatory bail to subvert or undermine investigative procedure that essentially includes arrest for effective prosecution of the offence through collection of evidence. The case establishes that mala fide manifestly intriguing upon the intended arrest is the only justification to suspend the usual course of law.
- 2006 SCMR 1292: This case law was cited regarding the legal position on abetment and conspiracy, highlighting the essential ingredients required to establish such charges.

6. The learned counsel presented Call Data Records (CDR) establishing nexus between the respondents and the principal accused. He particularly highlighted:

- Serial No.917 of CDR of Syed Inayat Hussain Shah showing incoming SMS from co-accused Raza Shah on 14.03.2021.
- Serial No.922 showing outgoing call of 160 seconds duration to co-accused Raza Shah on 14.03.2021.

- Serial No.267 of CDR of Syed Ehsan Ali Shah showing outgoing call to co-accused Raza Shah on 13.03.2021.

7. He also produced colored photographs showing the respondents with the arrested co-accused persons, demonstrating their association and connection with the principal accused.

8. Mr. Farooq H. Naek, learned counsel for the respondent Syed Inayat Hussain Shah @ Muhammad Ali contended that no statement was recorded from complainant or relatives on the day of incident despite them being alive. He argued that the respondent's name was not mentioned in the original FIR, and the statement story was concocted. He emphasized that no application was made to higher authorities and the belated statement was an afterthought. Regarding abetment under Section 107 PPC, he argued that the essential ingredients were missing. Concerning conspiracy under Section 120-A PPC, he contended that date, time, and place are main ingredients where conspiracy is done, which were not established. The counsel relied upon 1995 PLD Supreme Court 34 and 2020 SCMR 1115, arguing against misuse of bail concession. He cited 2022 SCMR 676 regarding parameters of conspiracy, particularly Para No.6. He highlighted that main accused Raza Shah and Jameel Shah were already on bail with no cancellation application filed. He pointed out that J.I.T was constituted on 14.07.2021, which recommended removal of Inayat Shah's name, and on 30.08.2021, challan was submitted placing him in Column No.2, which was not accepted by court. Significantly, he argued that the respondent remained Chairman from 30.08.2016 to 20.08.2020, and the period alleged against him was when he was not Chairman. He emphasized that neither Anti-Corruption nor NAB took any action, praying for dismissal.

9. Mr. Ali Ahmed Khan, learned counsel for respondent Syed Ehsan Ali Shah adopted similar contentions and additionally relied upon 1986 SCMR 1380.

10. Mr. Sikander Ali Junejo, learned counsel for respondent SIP Ashiq Ali Mirani argued at length, while the learned DPG for the State mentioned that Ashiq's name was introduced by I.O Abdul Qudoos in diary entries dated 18.05.2021 and 23.05.2021, showing only the name of accused in Para No.9 of JIT and challan report.

11. Having carefully considered the arguments advanced by learned counsel for all parties and having thoroughly examined the material available on record, this Court finds it necessary to analyze the legal principles governing the grant and cancellation of anticipatory bail in the context of the present case.

12. The power to grant anticipatory bail under Section 498-A Cr.P.C. is an extraordinary discretionary power that must be exercised judiciously. The Hon'ble Supreme Court in *Kamran Ataullah v. The State* (2021 SCMR 449) at page 451 has categorically held:

*"It is by now well settled that the accused in a criminal case cannot be granted anticipatory bail to subvert or undermine investigative procedure/process that essentially include arrest in order to bring the statutory exercise to its logical end for effective and meaningful prosecution of the offence through collection of information/evidence consequent upon arrest. Mala fide, manifestly intriguing upon the intended arrest, is the only justification to suspend or divert the usual course of law, a step most extraordinary by all means."*

This principle establishes that anticipatory bail is not a matter of right but an extraordinary remedy requiring exceptional circumstances.

13. The case involves serious allegations of criminal conspiracy under Section 120-B PPC. The Hon'ble Supreme Court in 1995 PLD Supreme Court 34 has laid down clear parameters for establishing conspiracy. The essential elements include:

- i) Meeting of minds between two or more persons
- ii) Agreement to do an unlawful act or a lawful act by unlawful means
- iii) Some overt act in pursuance of the conspiracy

14. In 2020 SCMR 1115, the Court has elaborated on the parameters of conspiracy, emphasizing that mere association or relationship without evidence of active participation in planning the crime is insufficient to establish conspiracy. The 2022 SCMR 676 case, particularly Para No.6, provides comprehensive parameters for establishing conspiracy charges, requiring concrete evidence rather than presumptions or associations.

15. The CDR evidence presented by the complainant shows communication between the respondents and principal accused in the days preceding the incident. However, mere telephonic communication, without more, cannot conclusively establish criminal conspiracy. The calls could be for legitimate purposes, and the prosecution must establish that these communications were specifically related to planning the criminal act.

16. The colored photographs showing respondents with co-accused persons establish association but fall short of proving criminal conspiracy. Association alone, without evidence of planning or participation in the criminal act, is insufficient for establishing guilt beyond reasonable doubt.

17. The fact that respondents were initially placed in Column No.2 of the challan indicates that the investigating officer found insufficient evidence to forward them for trial. The JIT's recommendation to remove respondent Inayat Shah's name further supports this position. Under Section 107 PPC, abetment requires either instigation, conspiracy, or intentional aid. The prosecution must establish specific acts of instigation or aid provided by the respondents. The mere fact that the deceased was writing against the respondents, while providing motive, does not establish the act of abetment without concrete evidence of instigation or aid.

18. A significant factor is that respondent Syed Inayat Hussain Shah served as Chairman from 30.08.2016 to 20.08.2020, while the incident occurred on 17.03.2021 and moreover the social media talks/posts were carried in

October, 2020. This temporal gap weakens the prosecution's case regarding motive based on his official position, as he was no longer holding office at the time of the incident.

19. The Hon'ble Supreme Court in *Shareef Khan v. The State* (2021 SCMR 87) has established specific grounds for cancellation of bail:

- i) If the bail granting order is patently illegal, erroneous, factually incorrect and has resulted in miscarriage of justice
- ii) If the accused has misused the concession of bail
- iii) If the accused has attempted to hamper prosecution evidence
- iv) If there is likelihood of absconding
- v) If the accused has interfered with investigation
- vi) If the accused has committed similar offences while on bail
- vii) If fresh material has been collected establishing guilt

20. For cancellation of bail, exceptional grounds must be established. PLD 1984 SC 192 (*Zia ul Hassan*) case at page 194 emphasizes that pre-arrest bail being an extraordinary remedy requires equally extraordinary grounds for its cancellation.

21. The burden lies on the applicant to establish that the impugned order suffers from patent illegality or that exceptional circumstances warrant interference. Mere disagreement with the trial court's assessment is insufficient. This Court, while exercising jurisdiction under Section 497(5) Cr.P.C., must determine whether the trial court's order is so manifestly erroneous as to warrant interference. The standard is not whether this Court would have decided differently, but whether the decision is legally sustainable. The FIR was registered two days after the incident. While this delay has been explained by the complainant, it does raise questions about the immediate reaction and the version of events.

22. The statements of complainant and witnesses were recorded on 15.04.2021, showing significant delay. Such delay affects the credibility and reliability of the evidence, particularly when the witnesses are closely related to the deceased. The investigation initially found insufficient evidence against the respondents, placing them in Column No. 2. The trial court's decision to join them was based on its assessment of the evidence, but this does not automatically establish *prima facie* guilt.

23. After careful consideration of all aspects of the case, this Court finds that Insufficient Evidence of Conspiracy, while the CDR and photographic evidence show association between respondents and co-accused, they fall short of establishing criminal conspiracy beyond reasonable doubt. The prosecution has not successfully demonstrated the meeting of minds or specific planning for the criminal act. The allegations of abetment lack concrete evidence of instigation or aid. The motive based on the deceased's writings, while relevant, is insufficient without evidence of specific acts of abetment. The trial court followed due process in granting anticipatory bail, considering the evidence and legal principles. The decision, while subject to disagreement, cannot be termed patently illegal or manifestly erroneous. The gap between respondent Inayat Shah's tenure as Chairman and the incident weakens the prosecution's case on motive. The initial assessment by investigating officers and JIT that placed respondents in Column No. 2 indicates insufficient evidence for prosecution.

The case law cited by both sides provides clear guidance:

- 2021 SCMR 449 establishes that anticipatory bail cannot be used to subvert investigation, but also requires mala fide to deny such relief.
- 1995 PLD Supreme Court 34 and 2020 SCMR 1115 provide parameters for conspiracy that are not fully met in this case
- 2022 SCMR 676 requires concrete evidence for conspiracy charges



- PLD 1984 SC 192 emphasizes the extraordinary nature of both granting and cancelling anticipatory bail

24. The jurisprudence regarding cancellation of bail applications encompasses several critical considerations. Bail cancellation applications under Section 497(5) Cr.P.C. are designed to address situations where the initial grant of bail was improper or where circumstances have changed warranting reconsideration. The scope is limited and the threshold is high, requiring exceptional circumstances. The consequences of cancelling bail are severe, as they result in loss of personal liberty. Therefore, courts must exercise this power sparingly and only when legally justified. *The Shareef Khan* (2021 SCMR 87) case provides clear guidelines that must be strictly followed. In the present case, the specific grounds for cancellation are not established:

- i) No Patent Illegality: The impugned order follows legal principles and considers relevant factors
- ii) No Misuse of Bail: There is no evidence that respondents have misused their liberty
- iii) No Tampering: No evidence of witness intimidation or evidence tampering
- iv) No Fresh Evidence: No new material has emerged that wasn't available during the original bail hearing
- v) No Flight Risk: No indication that respondents are likely to abscond

25. This case emphasizes the need for proper application of legal principles in bail matters. The trial court's consideration of evidence and legal framework in the impugned order aligns with these principles. The principles laid down in *Zia Hassan Supra*'s case regarding the extraordinary nature of pre-arrest bail support the position that equally extraordinary grounds are required for cancellation, which are absent in this case.

26. The specific holding that mala fide is required to deny anticipatory bail supports the respondents' position, as no such mala fide has been established by the prosecution. The principles regarding abetment and conspiracy set forth in this case are not satisfied by the evidence presented in this case.

27. The Court observes that while the murder of journalist Ajay Kumar Lalwani is indeed a heinous crime that requires thorough investigation and prosecution, the principles of criminal jurisprudence must be maintained. The freedom of press and the safety of journalists are crucial for democratic society, but the response to such crimes must be within the bounds of law. The investigation agencies and prosecution must focus on collecting concrete evidence rather than relying on presumptions or associations. The mere fact that the deceased was writing against certain individuals, while providing motive, does not automatically establish their guilt in his murder without substantial evidence. Courts must maintain the delicate balance between ensuring justice for victims and protecting the rights of accused persons. Anticipatory bail serves as a safeguard against arbitrary arrest and must be respected unless exceptional circumstances warrant its cancellation.

28. In our judicial experience, cases involving murder of journalists require careful handling to ensure that justice is not only done but is seen to be done. However, the emotional aspect of such cases should not cloud judicial reasoning. The principles of criminal law, burden of proof, and standards of evidence must be strictly adhered to. The present case presents a situation where the prosecution's case, while serious, falls short of meeting the legal standards required for cancellation of anticipatory bail. The evidence, though voluminous, lacks the quality and precision necessary to establish *prima facie* guilt beyond reasonable doubt.

29. The learned counsel for complainant's contention that a serious criminal conspiracy was hatched lacks sufficient legal foundation. While Section 120-B PPC criminalizes conspiracy, its essential ingredients require that the CDR evidence shows communication but not agreement for criminal purpose, while the murder occurred, the connection between respondents and the actual crime remains tenuous. The prosecution has not established specific acts by respondents in furtherance of the alleged conspiracy. The 1995 PLD Supreme Court 34 case establishes that conspiracy requires more than mere association or communication. The 2020 SCMR 1115 judgment further clarifies that conspiracy cannot be established through presumptions or circumstantial evidence alone without concrete proof of criminal agreement.

30. The allegations under Section 109 PPC require proof of instigation, conspiracy, or intentional aid. The prosecution's case suffers from i.e. no evidence shows respondents directly instigating the murder, the gap between alleged motive (official positions) and the incident and no evidence of material assistance provided to actual perpetrators

31. The 2022 SCMR 676 case, particularly Para 6, establishes specific parameters for bail cancellation that are not met:

- i) Patent illegality: The impugned order follows established legal principles
- ii) Misuse of concession: No evidence of bail misuse by respondents
- iii) Evidence tampering: No allegations or proof of witness intimidation
- iv) Fresh material: No new evidence warranting reconsideration

32. In 2021 SCMR 87, which is landmark judgment provides comprehensive guidance on bail cancellation, emphasizing that exceptional grounds must be established. The Court held that mere dissatisfaction with the bail order is insufficient; there must be compelling reasons based on legal principles. The case establishes precedents regarding evaluation of evidence in criminal cases, particularly emphasizing the quality over quantity of evidence.

The present case lacks the qualitative evidence necessary to justify bail cancellation.

33. In case of *Khalid Ahmed Khan Lund Versus The State* PLD 2015 Sindh 20, this Court provides guidance on local jurisprudence regarding bail matters, emphasizing the need for concrete evidence rather than assumptions.

34. The remaining case law cited by learned counsel, including 2009 SCMR 1210, 2012 P.Cr.L.J 986, 2010 SCMR 385, 2020 YLR 1077, 2017 YLR 658, and 1986 SCMR 1380, while relevant to criminal jurisprudence, do not establish grounds for bail cancellation in the present factual matrix.’

35. After exhaustive analysis of the facts, evidence, arguments, and applicable law, this Court concludes that the applications for cancellation of bail lack merit. The impugned order dated 29.03.2022 passed by the learned In-charge Judge of Anti-Terrorism Court No.1, Sukkur, is legally sound and does not warrant interference. The grounds established for bail cancellation in *Shareef Khan v. The State* (2021 SCMR 87) and other precedents are not satisfied. The prosecution has failed to establish that the order is patently illegal, misuse of bail by respondents, fresh evidence warranting reconsideration and any other exceptional circumstances. The principles laid down in *Kamran Ataulah v. The State* (2021 SCMR 449) regarding the need for mala fide to deny anticipatory bail support the respondents' position, as no such mala fide has been established. While this Court sympathizes with the complainant's loss and recognizes the serious nature of the allegations, the legal standards for bail cancellation must be maintained. The prosecution should focus on strengthening its case through proper investigation and evidence collection rather than seeking to restrict the liberty of accused persons without sufficient legal justification.

36. It is worth mentioning that principal co-accused Syed Raza @ Ali Raza and Syed Jameel Hussain Shah are already on bail granted by this Court

in Cr. Bail Appln. No.D-44 of 2022 vide order dated 14.02.2023 and co-accused Janib is also on bail granted by the learned trial Court vide order dated 13.04.2023; no cancellation of bails is sought for the same accused by the complainant.

37. For reasons recorded above, all three Criminal Miscellaneous Applications were dismissed vide short order dated 24.09.2025. It is, however, clarified that if at any stage during the trial, any of the respondents misuse the concession of bail or if fresh evidence emerges that warrants reconsideration, it shall be open to the complainant to approach the appropriate court for cancellation of bail with proper grounds. The observations made herein are for the purpose of deciding these bail cancellation applications and shall not prejudice the trial court's assessment of evidence during the trial proceedings. These are the detailed reasons for short order dated 24.09.2025

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