

**ORDER SHEET**  
**IN THE HGIH CORT OF SINDH AT KARACHI**  
**CrI. Misc. Application No.263 of 2025**

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Date

Order with signature of Judge

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For hearing of main case.

28.04.2025

Raja Hassan Nawaz, Advocate for the Applicant.  
Mr. Neel Parkash, APG

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**Shamsuddin Abbasi, J.** – Applicant Mohammad Sohail has impugned the order dated 15.11.2024, passed by learned XIth Additional Sessions Judge West Karachi in FIR No.607 of 2024, under Section 322, 34 PPC, registered at PS Saeedabad, Karachi whereby learned trial Court has granted post arrest bail to the Respondents, Dr. Saleem, Mohammad Rafiq and Yasmeen.

2. Learned counsel for the Applicant argued that the Respondents are allegedly involved in this case pertains to under Section 322, 34 PPC but infact this is a case of under Section 302 PPC and therefore, the learned trial Court has passed illegal order by admitting them on bail. Counsel for the Applicant submits that ingredient of Section 498 Cr.P.C on the point of malafide is missing in the application as well as in the impugned order. He further submits that sufficient material is available on record to connect the Respondents with the alleged murder of deceased Muhammad Shahid which comes within the ambit of prohibitory clause of Section 497 Cr.PC. He lastly prayed for grant of the instant CrI. Misc. Application. He has relied upon the following case laws:

- i. 2023 SCMR 1397.
- ii. 2020 SCMR 1115.
- iii. 2017 SCMR 1944.
- iv. 2020 PCrLJ 1001.
- v. 1976 SCMR 360.
- vi. 2015 MLD 196.

3. Learned APG supported the impugned order passed by learned Additional District & Sessions Judge-XI, Karachi-West.

4. Heard learned counsel for the Applicant as well as learned APG and perused the material available on record. The Respondents are allegedly involved in the offence pertains to Section 322 PPC which is aailable offence. I have gone through the impugned order and do not find any illegality or irregularity in the impugned order which has been passed in

accordance with law. The relevant portion of the impugned order is reproduced here as under:-

*“After heard the both side and gone through the material available on record. As per record, the complainant and accused persons are very close relatives and such facts has not been denied by any party. There is no allegations against accused persons that at the time of incident they having any weapon/lathi and used the same against deceased Muhammad Shahid and there is only allegations against the accused persons that they went to the house of complainant for talks and during talks, the accused persons fight with the deceased Muhammad Shahid who was already heart patient. The further allegations in the FIR are that the accused persons beaten with punch to deceased Muhammad Shahid and he fell down and accused persons escaped. As per the medical evidence available on record, there is no marks of violence available on the body of deceased Muhammad Shahid which required further evidence. I have taken the guidance from the reported case, High court of Sindh 2012 YLR 2551 Balochistan, The Honorable High Court has granted bail in offence 302/34 PPC in which the allegations against the accused persons were that they dragged the deceased and give him fist and kicks blows and there was no evidence on the record that the accused attacked the deceased with intention to kill him and admittedly no weapon has been used during the occurrence and that record shows that the deceased had died on account of cardiac disease or attack and the Honorable Court has granted bail by giving benefit of doubt in favor of accused persons at bail stage. During the arguments the counsel of complainant has taken the plea that the case of accused persons falls for offence under section 316 or 302 or 322 PPC but the FIR is lodged under section 322/34 PPC and the trial court / investigation officer has to determine on the basis of evidence whether the offence against the accused persons would be made out under section 302 or 316 or 322 PPC”.*

5. It is a matter of record that merits of the case can be considered in a pre-arrest bail as held by Hon’ble Apex Court in a cases reported in PLD 2017 SC 730 [Khalil Ahmed v. State], 2022 SCMR 1271 [Muhammad Ijaz v. State] and 2023 SCMR 1712 [Ch. Saeed Ahmed Khalil v. State].

6. It is well settled principal of law that consideration for grant of bail and its refusal are entirely different, as held by apex Court in the case of Saeedullah and 2 others v. The State and another [2023 SCMR 1397] has provided guidelines for the purpose of cancellation of bail. It is reproduced here as under:

- i. If the bail order is patently illegal, erroneous, factually incorrect and has resulted into miscarriage of justice.
- ii. That the accused has misused the concession of bail in any manner.
- iii. That accused has tried to hamper prosecution evidence by persuading/pressurizing prosecution witnesses.
- iv. That there is likelihood of absconsion of the accused beyond the jurisdiction of court.

- v. That the accused has attempted to interfere with the smooth course of investigation.
- vi. That accused misused his liberty while indulging into similar offence.
- vii. That some fresh facts and material has been collected during the course of investigation which tends to establish guilt of the accused.

In another case of Samiullah and another v. Laiq Zada and another [2020 SCMR 1115] the Apex Court has held that:

- i. The bail granting order was patently illegal, erroneous, factually incorrect and had resulted in miscarriage of justice;
- ii. The accused had misused the concession of bail in any manner;
- iii. The accused had tried to hamper prosecution evidence by persuading/pressurizing prosecution witnesses;
- iv. The accused had attempted to interfere with the smooth course of investigation;
- v. The accused misused his liberty while indulging into a similar offence; and
- vi. Some fresh facts and material had been collected during the course of investigation establishing guilt of the accused.

7. Therefore, there is no allegation against the Respondents that they have misused the concession of bail. In view of above, the instant Criminal Misc. Application is dismissed with directions to the learned trial Court to decide the case of the Applicant preferably within three [03] months.