

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Bail Appln. No. S-150 of 2025
Criminal Bail Appln. No. S-193 of 2025

Applicant (In Cr. Bail Appln. No. S-150/2025)	:	Mr. Ali Bux Mugheri Through Mr. Muhammad Ali Peerzada, advocate
Applicant (In Cr. Bail Appln. No. S-193/2025)	:	Ahsan Mugheri, Through Mr. Muhammad Ali Peerzada, advocate
The complainant		Mst. Lal Khatoon Through Mr. Mazhar Ali Bhutto, advocate
The State	:	Through Mr. Aitbar Ali Bullo, D.P.G for the State
Date of hearing		04-06-2025
Date of order		04-06-2025

ORDER

SHAMSUDDIN ABBASI, J.- Through this single order, I intend to dispose of two bail applications. Applicant Ali Bux Mugheri seeks post-arrest bail in Cr. Bail Appln. No. S-150/2025 and applicant Ahsan Mugheri seeks post-arrest bail in Cr. Bail Appln. No. S-193/2025. Both bail applications are arising out of same crime bearing No.174/2024, offence U/s 302, 114, 337-H(ii), 148, 149 P.P.C, whereby their bail pleas were declined by the learned VII-Additional Sessions Judge, Larkana vide order dated 13.03.2025 and 29.03.2025 respectively.

2. It is alleged in the F.I.R that applicants Ali Bux Mugheri and Ahsan Mugheri came at the scene of offence along with co-accused and it is further alleged in the F.I.R that applicant Ali Bux caused fire arm injury to deceased Asadullah (son of Complainant) on back side of his neck. Whereas, role of ineffective firing has been assigned to applicant/accused Ahsan Mugheri. Specific allegations for causing fire arm injury is also assigned to co-accused Wazir, Ali Sher and applicant/accused Ali Bux.

3. Learned counsel for the applicants/accused submits that the applicants are innocent and have falsely been implicated in this case due to recorded enmity in between the parties as applicant/accused Ali Bux is complainant in F.I.R No.12/2024 of Police Station Mahi Makol, U/S 302 P.P.C, wherein six persons of applicants side were killed by the complainant party and two persons were got injured; that during investigation, the applicant/accused Ali Bux and co-accused Riaz and Sikandar were found innocent by the I.O and

their names were placed in column No.2 of the challan. However, learned concerned Magistrate has taken the cognizance against them and issued B.Ws against co-accused Riaz and Sikandar, hence case of applicant/accused Ali Bux requires same treatment. Mere presence of applicant/accused Ihsan has been shown and sharing of common intention requires further inquiry in terms of Section 497(2) Cr.P.C. He has relied upon the case reported as in **2008 SCMR 249**.

4. On the other hand, learned counsel for the complainant has opposed for grant of bail on the ground that both the applicants are nominated in the F.I.R and specific role has been assigned to applicant Ali Bux for causing fire arm injury on back side of neck of deceased; that there is recorded enmity in between the parties and previously the applicant party has murdered the brother of complainant; that alleged offence comes within the prohibitory clause of Section 497 Cr.P.C; the complainant of this case impugned the order dated 22.01.2025, passed by the learned 5th Judicial Magistrate, Larkana, through Cr. Misc. Appln. No. S-72/2025 before this Court, which is pending adjudication before this court.

5. Learned D.P.G. has also advanced the same arguments by the learned counsel for the complainant that crime weapon has been recovered from applicant Ahsan Mugheri and F.S.L report is positive.

6. Heard learned counsel for the applicants, learned D.P.G, learned counsel for the complainant and perused the material available on record.

7. As far role of applicant/accused Ahsan Mugheri is concerned, his presence was shown at the scene of offence and role of ineffective fire has been assigned to him. It is settled law that bail is not to be withheld as punishment and accused cannot be kept in jail merely on the allegation that he is involved in a heinous offence, which carries capital punishment if he makes out his case for grant of bail on the basis of reasonable grounds. In my humble view, it has appeared in the F.I.R that applicant Ahsan Mugheri has shared his common intention and vicarious liability can be determined after recording evidence of prosecution witnesses. Reasonable grounds exist which make out the case of applicant Ahsan Mugheri for further inquiry in terms of Section 497(2) Cr.P.C. Mere recovery of crime weapon and F.S.L report will not disentitle him for grant of bail as held by Hon'ble Supreme

Court in cases reported as 2011 SCMR 902, 2022 SCMR 340 and 2021 SCMR 451. Accordingly, Cr. Bail Appln. No. S-193/2025 is allowed. The applicant/accused Ahsan Mugheri is admitted on post-arrest bail subject to furnishing solvent surety in the sum of Rs.200,000/- and P.R and P.R bond in the like amount to the satisfaction of trial court.

8. As far the role of applicant/accused Ali Bux is concerned, it is alleged in the F.I.R that applicant caused fire arm injury to deceased Asadullah on his back side of neck. Ocular version is corroborated by medical evidence. It is matter of record that co-accused Sikandar, Riaz and applicant/accused Ali Bux were found innocent by the I.O and he placed their names in the column No.2 of the challan. However, learned concerned Magistrate has taken cognizance of the offence against Sikandar, Riaz and present applicant and joined them in the trial by issuing B.Ws against Sikandar and Riaz. Learned counsel for the applicants has mainly contended that role of applicant Ali Bux is identical to the role assigned to co-accused Sikandar, therefore, he is also entitled for same relief. In my humble view, opinion of investigating officer is not binding upon the courts and learned concerned Magistrate has taken the cognizance of the against Sikandar, Riaz and applicant/accused Ali Bux. At this juncture, I restrain myself to give my findings on this issue for the reason that complainant of this case has already impugned the aforesaid order dated 22.01.2025 before this Court in Cr. Misc. Appln. No. S-72/2025, which is subject matter of criminal misc application, therefore, at this bail stage, it is not proper to comment on the impugned order which is a separate matter and would be decided in separate proceedings. No case for grant of post-arrest bail to applicant/accused Ali Bux Mugheri has been made out, therefore, Cr. Bail Appln. No. S-150/2025 is hereby dismissed.

9. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial court while deciding the case of either party at trial.

J U D G E

Abdul Salam/P.A