

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Bail Application No. S-92 of 2025

Applicant : Sikander Raza Jafri son of Raees Abbas Shah
Jafferri, Through Mr. Rukhsar Ahmed Junejo,
Advocate

Complainant : Niaz Ali, through Mr. Safer Ali Jagirani, Advocate

The State : Through Mr. Mansoor Ahmed Shaikh, DPG.

Date of hearing : 07-08-2025
Date of order : 13.08.2025

O R D E R

KHALID HUSSAIN SHAHANI, J. –Applicant Sikandar Raza, seeks post arrest bail in a case bearing crime No. 85/2021, offence under sections 302, 148, 149 PPC of PS B Section Khairpur, being aggrieved by the impugned order dated 21.01.2025 passed by the learned 1st. Additional Sessions Judge (MCTC), Khairpur, whereby his bail application was dismissed.

2. Briefly, the case of the prosecution is that on 02.04.2021, the complainant, Niaz Ali, lodged an FIR alleging therein that on 30.03.2021 at about 0100 hours, five persons, including the named accused Tahir and the applicant Sikandar Raza, entered the house of his nephew, Mujahid Hussain. The complainant alleges that while the accused Tahir fired upon the deceased, the present applicant, Sikandar Raza, and another unidentified person held the deceased by his arms. The FIR was lodged with a three days delay, which was attributed to the night-time, lack of conveyance, and waiting for the deceased's son to arrive.

3. Learned advocate argued that the applicant is innocent and has been falsely implicated. He highlighted that there was an inordinate and unexplained delay of three days in lodging the FIR, and the identification of the accused at night by the light of electric bulbs is a weak form of evidence. He contended that the co-accused, Tahir Phulpoto, was granted post-arrest bail on a compromise basis, and another co-accused, Sajjad Ali Shah, whose name not appears in FIR but introduced in further statements of complainant and eye

witnesses was granted bail on merits. The learned counsel argued that the applicant's case is not distinguishable from those co-accused, and thus, he is entitled to bail on the principle of consistency. He further argued that the role assigned to the applicant is only to have caught hold of the deceased, which does not warrant the refusal of bail. The counsel also stated that during the investigation, the Investigating Officer found the applicant innocent and submitted a report for disposal of the case under "A" class, although the concerned Magistrate took cognizance. In support of his arguments, the learned counsel placed reliance on several case laws, including 2023 YLR 943, 1995 SCMR 310, 1994 SCMR 393, 1994 SCMR 2161, 2010 YLR 2839, 2011 MLD 155, 2008 P.Cr.L.J 1512, and on the aspect of abscondance, he cited 2024 SCMR 1716, 2024 SCMR 464 (b), 2009 SCMR 299, and 2025 SCMR 318(b).

4. The learned DPG vehemently opposed the bail application, arguing that the applicant is not entitled to bail for several reasons. He stated that the applicant remained a fugitive from the law after his bail before arrest was dismissed by the Sessions Court on 06.09.2021, and was subsequently arrested on 08.12.2024. The DPG argued that an absconder is not entitled to bail. He further argued that the delay in lodging the FIR is not fatal, as it was explained by the prosecution and does not suggest a false implication. The DPG asserted that the applicant's act of holding the deceased while the co-accused Tahir fired the fatal shot establishes a common intention to commit the murder. He cited that participation in preparatory acts makes a person equally liable. The DPG maintained that the rule of consistency is also not applicable here because the circumstances surrounding the grant of bail to the co-accused were different, particularly due to the element of compromise.

5. Record reflects that the applicant Sikandar Raza is shown role of sharing common intention by grappling the deceased, whereby the co-accused Tahir fired upon the deceased. In this regard the learned advocate for the applicant relied upon the case of Mahmood Akhtar v. Haji Nazir Ahmad (1995 SCMR 310) is that when an accused is alleged to have only caught hold of a deceased person, thereby facilitating the murder by a co-accused, their case falls under the category of further inquiry under Section 497(2) Cr.P.C. This makes them entitled to bail, as their direct role in causing the fatal injury is not established. The Supreme Court relied on this principle to grant bail to the

accused Rehmat Hussain, whose role was to "have caught hold of the deceased before he was given injuries by his co-accused." The court also noted that the presence of a cross-version of the incident, with accused persons being empty-handed and not attributed with a direct injury, further strengthens the case for bail, as the discretion of the High Court to grant bail in such circumstances would not be interfered with. This case is distinguishable from the present bail application of Sikandar Raza because, in Mahmood Akhtar, the court was addressing an accused whose role was merely holding the deceased in the context of a cross-version and an earlier incident, which raised doubt about the prosecution's version and brought the case under further inquiry. In contrast, Sikandar Raza's application is not presented in the context of a cross-version. Most importantly, the present applicant, Sikandar Raza, is an absconder who intentionally evaded arrest after his pre-arrest bail was dismissed. The Supreme Court has repeatedly held that an absconder is not entitled to the concession of bail as a matter of right. This fundamental distinction of abscondance is a strong reason to deny bail, a factor that was not present or addressed in the specific grant of bail to the accused in 1995 SCMR 310. Secondly, the learned advocate relied upon the case *Shahid v. The State* (1994 SCMR 393) is that an accused person whose only alleged role in a murder case is "getting hold of the deceased" to facilitate the crime, along with the fact that a co-accused with a less significant role has been granted bail, presents a case for further inquiry under the law. The Supreme Court granted bail based on the principle of consistency, noting that it was yet to be definitively determined whether the accused's actions were sufficient to attract common intention under Section 34 PPC. This case is distinguishable from the present bail application of Sikandar Raza primarily because of the issue of abscondance. In the *Shahid* case, the court's decision was based on the ambiguity of the accused's role and the application of the rule of consistency due to a co-accused being on bail. However, in the case of Sikandar Raza, the fundamental fact is that he intentionally evaded arrest after his pre-arrest bail was dismissed. The Supreme Court has repeatedly established that a person who absconds from the law forfeits their right to the concession of bail. Therefore, the ratio of *Shahid v. The State* does not apply to the peculiar facts of the present case, where the accused's conduct after the initial rejection of bail is the primary reason for denying further relief. Thirdly, The ratio decidendi of the case *Muhammad*

Haroon v. The State (1994 SCMR 2161) is that in a murder case, an accused person who is not alleged to have inflicted any injury and whose role is limited to raising a "Lalkara" (shout) or merely holding the deceased, is entitled to bail as their case falls under the category of further inquiry under Section 497(2) Cr.P.C. The court granted bail to the accused with these lesser roles while denying it to the accused who had caused a firearm injury, establishing a clear distinction between the two. This case is distinguishable from the present bail application of Sikandar Raza because of the issue of abscondance. While the facts of Muhammad Haroon are similar in that one of the accused was granted bail for a lesser role of "holding the deceased," the decision was made without any mention of the accused having absconded. In contrast, Sikandar Raza intentionally evaded arrest after his pre-arrest bail was dismissed by the trial court. This act of absconding is a crucial differentiating factor. The Supreme Court has consistently held that an absconder is not entitled to the discretionary relief of bail. Therefore, the ratio of this case, which is based on the nature of the role, does not override the established principle that a fugitive from justice is disqualified from seeking bail. Learned advocate relied upon the case of Muhammad Irfan v. The State (2010 YLR 2839) in which bail can be granted based on the principle of further inquiry and the rule of consistency, even if the accused has been an absconder. The court held that the accused's role of merely "catching hold" of the deceased made his case one of further inquiry. Crucially, the court granted bail because a co-accused who had allegedly inflicted the fatal wound had already been granted bail, making the applicant's case even stronger. The court also noted that abscondance is not an absolute bar to bail, citing precedents where bail was granted despite an accused's fugitive status. This case is distinguishable from the present bail application of Sikandar Raza primarily because the core principles of its ratio decidendi further inquiry and the rule of consistency do not squarely apply. In the Muhammad Irfan case, the co-accused who allegedly inflicted the fatal blow had been granted bail, which made the applicant's case, with a lesser role, significantly stronger under the rule of consistency. In contrast, in Sikandar Raza's case, the co-accused were granted bail on the basis of compromise, which is a fundamentally different circumstance from a bail granted on merit. Furthermore, while the Muhammad Irfan case acknowledges that abscondance is not an absolute bar to bail, the facts of Sikandar Raza's case involve him evading arrest after his pre-arrest bail

was dismissed, a direct act of defiance against a judicial order, which the court in the present case deemed a critical factor disentitling him to bail.

6. Regarding the case of Niaz Ali v. The State (2011 MLD 155) an accused is entitled to bail on the ground of further inquiry when there is a delay in the FIR, no motive is established, and the accused's role is limited to merely "grappling" with the deceased without inflicting any fatal injury. The court emphasized that the prosecution's case was weak due to these factors and the lack of recovery of a weapon. It also noted that despite the accused being an absconder, the other grounds were sufficient to grant bail. This case is different from the present bail application of Sikandar Raza primarily because the accused in the cited case Niaz Ali, was a fugitive from the law, but his case was not a matter of bail refusal being a direct consequence of a previously rejected bail application. In contrast, Sikandar Raza intentionally absconded after his pre-arrest bail was dismissed by the trial court. This is a critical distinction. The dismissal of a bail application and subsequent evasion of arrest is a direct act of defiance against a judicial order, which is a powerful factor disentitling an accused to the discretionary relief of bail. While the court in Niaz Ali's case overlooked the abscondance, the facts of Sikandar Raza's case, where he absconded specifically after a judicial rejection of his bail, make his conduct a much more serious impediment to bail. Learned advocate relied on the case of Hakim Ali Toyo v. The State (2008 P Cr. L J 1512) wherein an accused person is entitled to bail on the ground of further inquiry when their role is limited to "holding" the deceased and no other overt act or injury is attributed to them. The court also considered the lack of evidence, such as no recovery of a weapon, as a key factor. This makes the case fall outside the prohibitory clause of Section 497(1) Cr.P.C. This case is distinguishable from the bail application of Sikandar Raza because of the issue of abscondance. While both cases involve an accused with a similar role of "holding" the deceased, Sikandar Raza's bail application is complicated by his decision to evade arrest after his pre-arrest bail was dismissed. This direct act of defiance against a court order is a significant and distinguishing factor that was not present in the cited case and serves as a strong reason to deny him bail.

7. Now coming to the points and distinction between abscondence & fugitiveness from law. The ratio decidendi of the case Zeeshan v. The State

(2024 SCMR 1716) is that an accused is entitled to post-arrest bail if their case falls under the category of further inquiry under Section 497(2) Cr.P.C. The court found this to be the case due to a lack of evidence, such as the non-recovery of the weapon and no medical report for an alleged injured person. Additionally, the rule of consistency was applied, as a co-accused had already been granted bail. The court explicitly stated that the mere abscondance of the accused for seven months was not an absolute bar to bail, particularly when other factors suggested a case for further inquiry. This case is distinguishable from Sikandar Raza's application due to the nature and timing of the abscondance. In the Zeeshan case, the accused was an absconder from the time of the incident, and the court found that this fact alone could not be the sole basis for denying bail when there were significant weaknesses in the prosecution's case. In contrast, Sikandar Raza was arrested after his pre-arrest bail was dismissed by a court order. His abscondance, therefore, was a direct act of defiance against a judicial directive, which is a much more serious impediment to bail than simply being a fugitive from the law since the time of the crime. The other cited judgments, 2024 SCMR 464, 2009 SCMR 299, 2025 SCMR 318 are also not relevant to the peculiar facts of this case, particularly the aspect of deliberate abscondence and the recording of evidence against the accused during that period. In this regard, I am also guided by the unreported judgment in Criminal Petition Nos. 562, 563, and 564 of 2019, decided by the Honorable Supreme Court of Pakistan on July 25, 2019. The relevant portion of the order is reproduced as follows:

"Before parting with this order, we would like to observe that these petitions seeking cancellation of the private respondents' bail are, even otherwise, misconceived because the impugned judgments passed by the High Court show that during the pendency of the proceedings before the High Court, the private respondents in these petitions had failed to appear, and resultantly, non-bailable warrants for their arrest had been issued, which could not be executed. The law already stands settled that if an accused person admitted to bail is subsequently declared a Proclaimed Offender or non-bailable warrants for his arrest are issued, then such declaration or issuance of non-bailable warrants ipso facto amounts to cancellation of that accused person's bail. A reference in this respect may be made to the case of Yousuf Masih v. The State (1987 P.Cr.L.J. 1412), Muhammad Boota v. Muhammad Arshad and another (Criminal Miscellaneous No. 1481-CB of 2009 decided by the Lahore High Court, Lahore on 09.02.2009), Sharafat Ali v. The State, etc. (Criminal Revision No. 680 of 2008 decided by the Lahore High

Court, Lahore on 15.04.2009, which order was subsequently upheld by this Court through the order dated 04.06.2009 passed in Criminal Petition No. 438-L of 2009), and Atta-ur-Rehman v. Rana Phool, etc. (Criminal Petition No. 558-L of 2014 decided by this Court on 17.07.2014)."

8. Moreover, being a fugitive from the law or an absconder carries significant negative legal effects as established in many judgments, including *Yousuf Masih v. The State* (1987 P.Cr.L.J 1412), *Muhammad Boota v. Muhammad Arshad* (Criminal Miscellaneous No. 1481-CB/2009), *Sharafat Ali v. The State* (Criminal Revision No. 680/2008), and *Atta-ur-Rehman v. Rana Phool* (Criminal Petition No. 558-L/2014), wherein it has been consistently reaffirmed that the abscondence of an accused and issuance of non-bailable warrants or proclamation ipso facto results in the cancellation of the earlier concession of bail. Courts view abscondance as a factor that disentitles an accused to judicial concessions like bail, even if the case might otherwise be one of "further inquiry." The legal system places a high value on an accused person's submission to the process. As per the above rulings fugitive status is a disqualifying factor for bail in subsequent applications. This reinforces the principle that an absconder loses their right to the discretionary relief of bail. While not an absolute bar in all cases, it remains a very strong factor against an applicant.

9. The court distinguished the case laws relied upon by the advocate, noting they were not applicable to the peculiar facts of this case. The court observed that the applicant had remained an absconder after his bail before arrest was dismissed, which disentitled him to further relief. The court also held that by actively participating in the crime by holding the deceased, the applicant shared a common intention with the principal accused. Therefore, there were reasonable grounds to believe the applicant had committed a non-bailable offense. So far as the ground of delay in registration of FIR is concerned, it is submitted that mere delay in registration of FIR is not always fatal. Once it is explained by the prosecution FIR is not lodged falsely. In the case of *Muhammad Ajaib Vs. Mehboob Khan* (2000 P.Cr.L.J 1484), it was observed by the Honorable Supreme Court Azad Jamu & Kashmir that "delay in lodging the F.I.R. in absence of any allegation of substitution or concoction was not fatal to the prosecution case. Eyewitnesses though closely related to the deceased had

no motive for false implication of accused and they had unanimously charged him for the murder of the deceased.” In the case of *Haq Nawaz Vs. The State* (2008 P.Cr.L.J 484), the Honourable Lahore High Court was of the view that the delay in lodging of FIR in absence of previous enmity would not matter much. In the case of *Mian Muhammad Nawaz Sharif Vs. The State* (PLD 2002 Karachi 152), this Court held that lodging of F.I.R. with delay or promptness. Delay or promptness in lodging the F.I.R. shall not in all cases lead to an inference about truth or otherwise of the case set up in the F.I.R. Where the facts were remarkably peculiar and by delaying the F.I.R. prosecution had not gained anything and had produced enormous evidence which was trustworthy and believable, the delay in lodging of the F.I.R. was immaterial in circumstances. In the case of *Sher Khan Vs. The State* (1996 P.Cr.L.J 668), the Honorable Federal Shariat Court was of the view that delay per se in lodging the F.I.R. is generally not sufficient to cast a doubt whether the prosecution case unless, either by evidence or otherwise, it is shown that delay was caused as the complainant was involved in making out a false case against the accused.

10. Moreover, in the case of *Ali Imran v. the State* (2007 PLD SC 87) it was held that common intention generally involves an element of common motive, preplan preparation and action in pursuant to such plan. It proves that accused including present accused had actively participated in the criminal transaction as they shared common intention and thus, they are vicariously liable for the same offence. In the case of *Ali Imran v., the State* (PLD 2007 SC 87) the Honorable Apex Court while interpreting s. 34 PPC observed that common intention generally involves element of common motive, pre plan preparation, and action pursuant to such plan. Intention to commit crime can be gathered from the circumstances, which may prevail at the spur of moment or in reaction to happening of such event.

11. This court also finds that the arguments regarding the delay in the FIR and the nature of the identification are not sufficient at this stage to cast doubt on the prosecution's case, particularly given the applicant's conduct. Furthermore, the role attributed to the applicant, which is to have held the deceased while the fatal shot was fired, makes him an active participant in the commission of the offense. This action clearly demonstrates a shared common intention with the principal accused, making him vicariously liable for the

murder under Section 34 of the PPC. Therefore, there are reasonable grounds to believe that the applicant has committed a non-bailable offense punishable with death or life imprisonment. The rule of consistency is also not applicable in this case, as the circumstances surrounding the grant of bail to the co-accused were different, particularly due to the element of compromise. For the foregoing reasons, the bail application is hereby dismissed. However, given the time that has elapsed, the learned trial court is directed to conclude the trial within three months after receipt of this order.

J U D G E