

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S-684 of 2025

Applicant : Muhammad Ismail s/o Lal Bux Maitlo,
Through Mr. Nazeer Ahmed Junejo,
Advocate

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

Dated of Hearing : 28.08.2025
Dated of order : 28.08.2025

ORDER

KHALID HUSSAIN SHAHANI, J.- Applicant Muhammad Ismail Maitlo, seeks pre-arrest bail in Crime No.105/2025, registered at Police Station B-Section Khairpur, for offences under Sections 337-F(i), 337-F(iii) and 337-F(v) PPC.

2. The complainant Qurban Ali has set the law into motion by lodging the FIR on 05.03.2025, alleging therein that on 15.12.2024, while he along with his brother Sohrab and nephew Waseem was present near Green City Gate at Sim Nali Luqman at about 1:00 p.m., the present applicant, armed with a lathi, accompanied by co-accused Wali Muhammad armed with a knife, Naeem armed with an iron rod, and an unidentified individual, arrived and threatened him over a pending land dispute. It is alleged that the applicant gave a lathi blow on the right arm of the complainant while co-accused Wali Muhammad inflicted a knife injury on his right hand, and others also beat him. On his cries, people gathered and rescued him, whereafter the accused fled away.

3. Learned counsel for the applicant has raised multiple grounds. Firstly, he submits that there is an admitted enmity between

the parties over landed property, thus the possibility of false implication with mala fide intention cannot be ruled out. Secondly, it is contended that the occurrence allegedly took place on 15.12.2024, but the FIR was lodged after an unexplained delay of two months and twenty days i.e., on 05.03.2025, despite the fact that the medico-legal certificate of alleged injuries was obtained on 18.12.2024. Such inordinate and unexplained delay casts doubt upon the veracity of the prosecution story and indicates deliberation and consultation. Thirdly, counsel points out that the co-accused Wali Muhammad and Naeem, attributed a knife and iron rod injury respectively, have already been granted pre-arrest bail by the learned Additional Sessions Judge-III, Khairpur, therefore the principle of consistency demands that the present applicant be extended the same concession. He further argued that after investigation, the Investigating Officer placed the name of the applicant in Column-II of the challan/report under Section 173 Cr.P.C., however, the learned Magistrate took cognizance notwithstanding such report. This, according to the learned counsel, squarely brings the case within the ambit of further inquiry under Section 497(2) Cr.P.C. Lastly, he emphasized that the alleged injuries fall under Section 337-F(v) PPC, punishable up to five years imprisonment, which does not attract the prohibitory clause of Section 497(1) Cr.P.C., and therefore, bail is a rule while refusal is an exception in such like cases.

4. Conversely, learned Additional Prosecutor General opposed the bail plea by contending that the applicant is specifically named with a clear role of inflicting lathi blow on the complainant,

which finds support from medical evidence wherein the injury has been opined as *Jurh Ghayr Jaifah Hashimah*. Hence, according to him, sufficient material exists to connect the applicant with the commissioning of the alleged offence. He further argued that the delay, though substantial, was occasioned on account of initial medical treatment followed by obtaining of the medical certificate, which reasonably explains the delay in lodging the FIR.

5. The material on record reflects that the alleged incident occurred on 15.12.2024, while the FIR was registered on 05.03.2025, resulting in a delay of more than two months, which in absence of any convincing explanation creates serious doubt about the prosecution's case, particularly when the medical certificate was admittedly obtained within three days of the occurrence. The Hon'ble Supreme Court, in the case of *Tariq Bashir v. The State* (PLD 1995 SC 34), laid down the principle that delay in lodging FIR gives rise to presumption of false involvement and consultation. Similarly, in *Riaz Jafar Natiq v. Muhammad Nadeem Dar* (2011 SCMR 1708), it has been held that delay without cogent explanation renders the narrative of the complainant doubtful warranting caution in bail matters.

6. In the present case, though the applicant is attributed a lathi blow, it is pertinent that the injuries alleged fall under Section 337-F(v) PPC, which prescribes punishment up to five years, and thus, do not fall within the prohibitory clause of Section 497(1) Cr.P.C. It is well settled through authoritative pronouncements of the Hon'ble Supreme Court, including *Muhammad Tanveer v. The State* (PLD 2017 SC 733) and *Muhammad Shakeel v. The State* (2020 SCMR 955), that in cases

falling outside the purview of the prohibitory clause, grant of bail is a rule and refusal an exception.

7. Equally significant is the investigative report wherein the name of the present applicant was placed in Column-II of the report under Section 173 Cr.P.C. This indicates that even the Investigating Officer did not collect any incriminating material against him. The learned Magistrate, however, took cognizance against the applicant, yet such difference of opinion by itself creates a scope of further inquiry, as observed in the case of *Zahid Hussain v. The State* (2021 SCMR 2006).

8. Furthermore, the rule of consistency cannot be ignored. Co-accused Wali Muhammad and Naeem, attributed with more serious overt acts involving knife and iron rod, respectively, have already been admitted to pre-arrest bail. The Supreme Court in *Muhammad Shafiq v. The State* (2016 SCMR 920) emphasized that when similarly placed co-accused are granted bail, the other accused should ordinarily be extended the same concession unless their case is distinguishable on material grounds.

9. In view of the above circumstances, particularly unexplained and inordinate delay in lodging FIR, nature of offence not falling within the prohibitory clause, prior placement of applicant's name in Column-II of the challan, and grant of bail to co-accused on principle of consistency, the applicant has succeeded in making out a case of further inquiry within the contemplation of Section 497(2) Cr.P.C.

10. Resultantly, the interim pre-arrest bail granted to the applicant on 08.08.2025 is hereby confirmed on the same terms and conditions. It is, however, clarified that the observations made herein are purely tentative in nature and shall not prejudice the merits of the case at the trial stage.

JUDGE