

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

CrI. Bail Appln. No. S-696 of 2025

Applicants : 1. Manzoor s/o Gul Bahar Kharos
2. Sadiq s/o Manzoor Kharos
Through Mr. Ali Akbar Shar, Advocate

Respondent : The State
Through Mr. Shafi Muhammad Mahar, DPG

Date of hearing : 28.08.2025
Date of order : 03.09.2025

ORDER

KHALID HUSSAIN SHAHANI, J –Applicants Manzoor and Sadiq seek indulgence of this Court for grant of bail in a case bearing crime No. 01/2022, for offence under sections 302, 364, 337H(ii), 148, 149 PPC registered at PS Faiz Muhammad Narejo. Prior to this, bail of applicants was declined by the court of learned Additional Sessions Judge-I/ MCTC Khairpur.

2. The brief facts of the prosecution case, as emerging from the FIR lodged by Mst. Umrah on 11.01.2022 are that, in the year 2012, accused Muhammad Nawaz committed the murder of son of brother-in-law of the complainant namely Abdul Waheed and made injured her son Mumtaz Ali, which created enmity between the parties. On 08.01.2022 at evening time, her son Raja aged about 28/29 years, Nazar Muhammad and grandsons Siraj Ahmed alias Katoo, Ali Gul and Nazir Ahmed were cleaning grass in their agricultural land at about 1730 hours when 35 armed men emerged from the western side, who were identified as various accused persons including the present applicants, all armed with rifles, Kalashnikovs and guns. The accused persons allegedly threatened the complainant party stating that due to murderous enmity, they would not spare them and would commit murder. Thereafter, the accused persons with intention to commit murder made straight firing and abducted her son Raja, Nazar Muhammad and grandson Siraj Ahmed with intention to commit murder. Subsequently, on 09.01.2022, the dead body of her son Raja was recovered from jungle bearing firearm injury on his right thigh. After the usual investigation and post-mortem examination, the dead body was handed over to the complainant party, and after funeral proceedings, the complainant appeared at the police station and lodged the present FIR.

3. The learned advocate for the applicants/accused has reiterated the grounds mentioned in the bail application and has strenuously argued that the applicants are innocent who have been falsely implicated in this case due to murderous enmity between the parties, which stands admitted by the complainant in FIR. It has been contended that there exists inordinate delay of three days in lodging the FIR without any plausible explanation, which provided sufficient time to the complainant for consultation and deliberation to fabricate a false case. The learned counsel has emphasized that no specific role or overt act has been attributed to the applicants/accused, and there are only general allegations against them in the FIR. It has been particularly highlighted that co-accused namely Ali Sher s/o Ali Hassan, who is shown with general role in the instant FIR, was allegedly murdered by the complainant party on 08.01.2022 at 1500 hours, whereas the present incident as per FIR occurred on 08.01.2022 at 1730 hours. The learned counsel has argued that if Ali Sher was murdered two hours prior to the incident mentioned in the instant FIR, then how a deceased person could commit any crime whatsoever alleged in this case, which renders the entire prosecution case doubtful and requires further inquiry. Additionally, it has been submitted that the alleged abductees Nazar Muhammad and Siraj Ahmed, who are shown as abducted in this FIR and are allegedly not yet recovered, are in fact roaming freely and have committed murder of one innocent person from the applicants' side, for which FIR bearing crime No. 31/2025 has been lodged by Mst. Nazeeran at Police Station Faiz Muhammad Narejo, in which the said alleged abductees Nazar Muhammad and Siraj are nominated as accused persons. The learned counsel has further argued that co-accused Shahnawaz has been granted bail by the learned Trial Court vide order dated 08.01.2025, and since the role attributed to the present applicants is identical to that of accused Shahnawaz, the present applicants are entitled to grant of bail on the principle of rule of consistency. It has been submitted that there was a patch-up between the parties, and complainant Mst. Umrah had submitted her objection affidavit in respect of bail grant to co-accused Shahnawaz Kharos, but after the patch-up, male members of the complainant party attacked the applicants' party and committed murder of one innocent person, which demonstrates exaggeration on the part of complainant party. The learned counsel has emphasized that there are clear contradictions between the postmortem report and the version of the complainant, which creates doubt in the prosecution case and requires further inquiry. It has been

argued that all prosecution witnesses are close relatives of the complainant and are interested witnesses who are not reliable. No incriminating evidence has been recovered from the possession of the applicants/accused that could link them to the commission of the instant crime, and at this stage, the present applicants should be presumed innocent. The investigation has been completed, the case has been challaned, and the applicants/accused are no longer required for further investigation. The learned counsel has relied upon the celebrated case of *Manzoor and 4 others v. The State (PLD 1972 SC 81)*, wherein the Honorable Supreme Court observed that bail is not to be withheld as a punishment, and there is no legal or moral compulsion to keep people in jail merely on allegations unless reasonable grounds appear to exist to disclose their complicity.

4. The learned Deputy Prosecutor General for the State, has vehemently opposed the bail application on various grounds. It has been contended that the names of the applicants/accused appear in the FIR with specific role and overt act, and they are involved in a heinous murder case which carries capital punishment. The learned DPG has argued that the applicants are not entitled to the concession of bail as the offense falls within the prohibitory clause of Section 497 Criminal Procedure Code. It has been submitted that sufficient material exists on record to connect the applicants/accused with the commission of the alleged offense, and all prosecution witnesses have fully implicated the applicants in their statements recorded under Section 161 Criminal Procedure Code. The learned DPG has further argued that although there is delay of about three days in lodging the FIR, such delay has been properly explained by the complainant, and delay in lodging FIR would not be fatal to the prosecution case particularly in serious and heinous offenses. It has been contended that the applicants/accused, despite having knowledge, remained fugitives from law since the lodgment of FIR, which demonstrates their consciousness of guilt. The learned DPG has distinguished the case of co-accused Shahnawaz, stating that he was granted bail on the basis of no-objection affidavit of the complainant and on infirmity grounds, whereas in the present case, the complainant has appeared in person and strongly opposed the bail application.

5. Having heard the learned counsel for both sides and having perused the record with their able assistance, this Court has given deep consideration to

the arguments advanced at the bar and the material available on record. The fundamental principle governing bail applications is well settled that the grant of bail is the rule and refusal is the exception, particularly when the case does not fall within the prohibitory clause of Section 497(1) Criminal Procedure Code or when the case requires further inquiry under Section 497(2) of the Code.

6. The Honorable Supreme Court in the landmark case of *Manzoor and 4 others v. The State (PLD 1972 SC 81)* has categorically laid down the principle that it is important to remember that bail is not to be withheld as a punishment, and there is no legal or moral compulsion to keep people in jail merely on allegations that they have committed offenses punishable with death or transportation, unless reasonable grounds appear to exist to disclose their complicity. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run.

7. The Supreme Court in *Tariq Pervez v. The State (1995 SCMR 1345)* has observed that for giving the benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to benefit of doubt not as a matter of grace and concession but as a matter of right. Similarly, in *Muhammad Boota vs. The State*, the superior courts have consistently held that accused could be granted bail if his case was otherwise made out on merits and mere fugitive status would not come in the way of his bail.

8. In the case of *Sikandar A. Karim vs. The State (1995 SCMR 387)*, it has been held that even for the purpose of bail, the law is not to be stretched in favor of the prosecution and any benefit of doubt arising in the case must go to the accused. The principle has been further reinforced in various subsequent decisions of the superior courts that when the prosecution case is not free from doubt, the benefit thereof must accrue in favor of the accused as a matter of right and not of grace

9. In the present case, a careful examination of the record reveals several circumstances which create reasonable doubt about the involvement of

the applicants/accused in the alleged crime and which call for further inquiry within the meaning of Section 497(2) Criminal Procedure Code. The most significant aspect is the allegation that co-accused Ali Sher s/o Ali Hassan, who is mentioned in the FIR with a general role, was allegedly murdered by the complainant party on 08.01.2022 at 1500 hours, while the incident mentioned in the present FIR is alleged to have occurred on the same day at 1730 hours. If this contention is correct, it raises serious questions about the veracity of the entire prosecution case, as a deceased person cannot participate in criminal activities two hours after his death. The fact that the alleged abductees Nazar Muhammad and Siraj Ahmed, who are shown as victims in this case, are reportedly free and have themselves become accused in another murder case (FIR Crime No. 31/2025) also creates substantial doubt about the truthfulness of the prosecution version. This circumstance, if established, would completely undermine the foundation of the prosecution case regarding abduction and the motive attributed to the accused persons.

10. The delay of three days in lodging the FIR, while explained by the complainant, nonetheless provided ample opportunity for consultation and deliberation in cases involving inter-party enmity. The Supreme Court has consistently held that in cases involving enmity between parties, delay in lodging FIR assumes greater significance and can be indicative of fabrication. The fact that all witnesses are close relatives of the complainant and are therefore interested witnesses also requires careful consideration at the trial stage.

11. The role attributed to the present applicants/accused appears to be general in nature without specific overt acts being attributed to them individually. The postmortem report and its correlation with the prosecution version also requires detailed examination at the trial stage. No recovery of incriminating material has been made from the possession of the applicants which could directly link them with the commission of the alleged offense.

12. The investigation stands completed, and the applicants are no longer required for further investigation. The case has been challaned and is pending trial before the learned Additional Sessions Judge-I Khairpur. Under these circumstances, keeping the applicants behind bars would serve no useful purpose and would amount to advance punishment without establishing their guilt through due process of law.

13. While this Court acknowledges that the offense is serious in nature and falls within the prohibitory clause of Section 497(1) Criminal Procedure Code, the principle laid down by the Supreme Court in various cases, including Muhammad Nadeem's case, clearly establishes that the case of further inquiry presupposes tentative assessment which may create doubt with respect to the involvement of accused in the crime. The basic idea is to enable the accused to answer criminal prosecution against him rather than let him rot behind bars. The accused is entitled to expeditious access to justice, which includes right to fair and expeditious trial without any unreasonable and inordinate delay.

14. In *Zaigham Ashraf v. State and others* (2016 SCMR 18), the Supreme Court held that to curtail the liberty of a person is a serious step in law, therefore, judges shall apply judicial mind with deep thought for reaching at fair and proper conclusion albeit tentatively. However, this exercise shall not be carried out in vacuum or in flimsy and casual manner as that will defeat the ends of justice because if the accused charged is ultimately acquitted at the trial, then no reparation or compensation can be awarded to him for long incarceration. The case of *Muhammad Ismail v. Muhammad Rafique* (PLD 1989 SC 585) has established the principle that when an accused becomes entitled to bail as of right under Section 497(2) Criminal Procedure Code, the same cannot be withheld on grounds of normal practice of courts, because the latter is relatable to exercise of discretion while the former is relatable to exercise and grant of a right.

15. In view of the above discussion and the legal principles established by the superior courts, this Court is of the considered view that the present case calls for further inquiry within the contemplation of Section 497(2) Criminal Procedure Code. The circumstances highlighted above create reasonable doubt about the involvement of the applicants/accused in the alleged offense and require detailed examination at the trial stage. The tentative assessment of the available material suggests that there are sufficient grounds to believe that the case requires further probe rather than keeping the applicants in continued detention. The principle of rule of consistency, while not automatically applicable, also supports the grant of bail when co-accused persons having similar roles have been granted bail in similar circumstances. The fact that there appears to be ongoing litigation between the parties with cross-cases being registered further strengthens the case for bail, as it indicates that the matter

involves complex inter-party disputes which can only be properly adjudicated through full trial proceedings.

16. In light of the foregoing discussion and keeping in view the well-settled principles of law regarding grant of bail, particularly in cases requiring further inquiry, this Court is satisfied that the applicants/accused have made out a case for grant of bail. The investigation is complete, the case has been challaned, and continued detention of the applicants would not serve any useful purpose. The interests of justice would be better served by allowing the applicants to defend themselves while on bail rather than keeping them incarcerated during the prolonged trial proceedings.

17. Consequently, for the reasons discussed hereinabove, this bail application is allowed. The applicants/accused Manzoor s/o Gul Bahar and Sadiq s/o Manzoor are admitted to post-arrest bail subject to their furnishing solvent surety in the sum of Rs.5,00,000/- (Five Hundred Thousand Rupees) each, and PR bond in like amount to the satisfaction of the learned Trial Court.

18. It is made abundantly clear that the observations made hereinabove are purely tentative in nature and are meant only for the purpose of deciding this bail application. These observations shall not prejudice the case of either party during the trial.

J U D G E