

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD.**

**Criminal Bail application No.S-702 of 2025**

**Applicant** : Photo son of Muhammad Bux Gabol through  
Mr. Mashooque Ali Mahar, advocate.

**Respondent** : The State, through Ghulam Murtaza Mallah,  
Assistant Prosecutor General, Sindh.

**Complainant** : Bashir Ahmed son of Abdul Kareem through  
Mr. Ghulam Rasool Mallah, advocate.

**Date of hearing** : **22.09.2025**  
**Date of order** : **22.09.2025**

**ORDER**

**TASNEEM SULTANA, J.-** Through this bail application, the applicant Photo son of Muhammad Bux Gabol seeks post arrest bail in Crime No.04/2025, for the offence under Sections 365, 511, 382, 337-H(ii), 34 PPC, registered at PS Amri, District Jamshoro, after his post arrest bail application was declined by the learned Additional Sessions Judge, Sehwan vide order dated 03-06-2025.

2. Brief facts of the case are that complainant Bashir Ahmed lodged FIR on 26.04.2025, that his brother Shabir having tailor shop at village New Sonhari did not come home in the night, therefore he alongwith his nephew Qurban Ali went on their motorcycle for search of Shabir and on the way they came to know that accused Photo, Ameen, Asif, Abdul Wahid, Abdul Raheem, Sahib, Mukeem and two unknown persons riding on three motorcycles were taking Shabir Ahmed alongwith his motorcycle towards Sonhari who was raising cry, therefore the complainant proceeded towards Sonhari where his brother Shabir Ahmed met him near old tank of railway station and informed that Photo had tussled with him few days ago and he was annoyed and that the accused Photo with pistol, Ameen with pistol, Asif with Lathi, Abdul Wahid with danda, Abdul Raheem with iron bar, Sahib with lathi, Mukeem with iron bar and two unknown persons took him on their motorcycle and said that they would confine him at unknown place, then when they reached at railway station old tank and he tried to save himself and raised cries so they fell down from motorcycle, thereafter the accused on seeing the villagers caused aerial firing and took away his motorcycle, mobile phone and wallet containing Rs.9000/-.

3. Learned counsel for the applicant contends that the FIR was lodged with a delay of 21 hours without any plausible explanation; therefore, the possibility of its fabrication after due consultation and deliberation cannot be ruled out; that as per the contents of the FIR, the complainant and the present applicant had no prior acquaintance, but due to police officials' mala fide intention and previous enmity with the complainant's party, the applicant has been falsely implicated; that neither any offence has taken place as alleged, nor has the applicant/accused any concern with the same. The entire story is false, fabricated, untrustworthy, and unbelievable, lacking any independent or corroborative evidence, and has been cooked up to humiliate, disgrace, and victimize the applicant; that FIR itself admits a dispute between the complainant's brother, namely Shabir Ahmed, and the applicant/accused party, which strengthens the possibility of false implication and mala fide on the part of the complainant; that no specific role has been attributed to the applicant/accused, and all allegations are general in nature; that the narration in the FIR does not fulfill the ingredients of Section 382 PPC, as there is no mention of causing death, hurt, or preparation for theft; hence, the said section is not attracted; that the alleged recovery has been managed and foisted upon the applicant/accused, whereas the real dispute is of a civil nature, which has been maliciously converted into criminal litigation; that the case of the applicant is one of further inquiry and he is entitled to the concession of post-arrest bail.

4. Conversely, learned counsel for the complainant assisted by the learned Assistant Prosecutor General opposed the bail; that the applicant/accused is nominated in the FIR and also implicated by PW Shabir in his statement recorded under Section 161 Cr.P.C. The injuries sustained by PW Shabir, as reflected in the medical certificate available on record, prima facie support his version and establish his presence at the spot. The delay in lodging the FIR has been prima facie explained therein. It further appears that the stolen motorcycle was recovered from the applicant/accused while in police custody.

5. Heard. Record perused.

6. The allegations against the applicant as to his involvement in the crime are supported by the statements of witnesses recorded by the investigating officer under section 161 of the Code of Criminal Procedure, 1898, which include the statements of the Qurban Ali and Shabbir Ahmed. The incident is further supported by the medical certificate of victim. Furthermore, the recovery of the stolen motorcycle bearing Registration No. KFC-3254, as well as the mobile phone and wallet of the victim, has also been effected from the the applicant/accused during investigation, which directly connects him with the

crime. Prima facie, sufficient incriminating material is available on the record which could connect the applicant with the commission of the alleged offence.

7. Bail can be refused in such offences when the case of the accused falls within any of the three well-established exceptions: (i) likelihood to abscond to escape trial; (ii) likelihood to tamper with the prosecution evidence or influence the prosecution witnesses to obstruct the course of justice; and (iii) likelihood to repeat the offence. In the present case, the applicant appears to have had the real motive of previous scuffle with injured (as mentioned in the FIR) for the commission of the alleged offence while the others abetted him in his cause. The other accused persons are absconders, and the police have so far only succeeded to bring the applicant to justice. There is thus a likelihood that the applicant may also abscond if he is released on bail. The exceptions of likelihood of repeating the offence and influencing the witness are thus also attracted. The case of the applicant, therefore, attracts not one but almost all the three exceptions which justify the declining of bail falling within the prohibitory clause of section 497(1), Cr.P.C. The Apex Court held in the case of *Shameel Ahmed vs. The State (2009 SCMR 174)* held that grant of bail non-bailable offence is not the right of an accused rather it is a concession. For ease of reference the relevant portion of the referred case law is reproduced herein below:

*“4....Bail in a case not falling within the prohibitory clause of S. 497, Cr.P.C. --- Principles--Grant of bail in cases not falling within the domain of prohibition clause of proviso to S.497, Cr.P.C. is not a rule of universal application---Each case has to be seen through its own facts and circumstances---Grant of bail, no doubt, is a discretion granted to a Court, but its exercise cannot be arbitrary, fanciful or perverse.”*

8. In view of the specific role attributed to him, supported by medical evidence, coupled with recovery of the stolen articles, the applicant/accused has failed to make out a case for the grant of post-arrest bail. His case, therefore, does not call for further inquiry, and prima facie he is not entitled to the concession of bail. Accordingly, this bail application was dismissed vide my short order dated 22.09.2025 and these are the reasons in support thereof.

9. The observations made hereinabove are tentative in nature and shall not prejudice the trial Court at the stage of final determination.

**JUDGE**