

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

Criminal Bail application No.S-990 of 2025

Applicants : 1. Ghulam Mustafa s/o Qadir Bux
2. Muhammad Ayoub @ Ayoub s/o Mooso @ Moosa Mangsi through Mr. Aakash Ali Rind, advocate.

Respondent : The State, through Ms. Safa Hisbani, Assistant Prosecutor General, Sindh, along with SIP Khan Muhammad PS Abadgar.

Complainant : Razzaq Ali present in person.

Date of hearing : 25.09.2025
Date of order : 25.09.2025

ORDER

TASNEEM SULTANA, J.- Through the instant bail application, the applicants/accused Ghulam Mustafa and Muhammad Ayoub @ Ayoub seek pre-arrest bail in Crime No.46 of 2025, registered under Sections 452, 506(ii), 337-H(ii), 337-A(i), 504, 509, 35, and 337-F(i), PPC at Police Station Abadgar, District Tando Muhammad Khan. Prior to this, the applicants approached the learned Sessions Judge, Tando Muhammad Khan, for the same relief; however, their pre-arrest bail was recalled vide order dated 23.08.2025.

2. Brief facts of the prosecution case are that a dispute exists over a piece of land between the complainant and accused Ghulam Mustafa s/o Qadir Bakhsh Magsi and Ayoub s/o Moosa Magsi, who allegedly used to threaten the complainant and his family to vacate the said land and house. It is alleged that on 21.07.2025, at about 2:00 a.m., the complainant and his family members, namely his wife Mst. Parveen Khaskheli, sister-in-law Mst. Ayesha w/o Hakim Khaskheli, and paternal aunt Mst. Allah Bachai w/o Ashraf Khaskheli, woke up upon hearing the barking of dogs. In the light of a bulb, they allegedly saw and identified the accused persons armed with various weapons, who entered into the house, abused the inmates, and stated that despite repeated warnings to vacate the property, the complainant had not complied; therefore, they would kill them. Accused Abdul Kareem @ Man allegedly made aerial firing, while accused Ayoub Magsi and Ghulam Mustafa Magsi alleged to have caused injuries to female members of the complainant's family. On the cries of the complainant

party, other family members arrived, whereafter the accused persons fled from the scene after issuing threats.

3. Learned counsel for the applicants contends that the applicants are innocent and have been falsely implicated due to an ongoing civil dispute over the land; that the complainant, being motivated with mala fide intention and personal grudge, has converted a civil matter into criminal proceedings; that the complainant himself is an accused in Crime No.43 of 2025, and to counter the same, he lodged the present false FIR; that a counter FIR No.47 of 2025 was also lodged by the applicants against the complainant and his father; that the alleged offences are either bailable or do not fall within the prohibitory clause of Section 497, Cr.P.C.; and that, therefore, the applicants are entitled to the extraordinary relief of pre-arrest bail.

4. Conversely, learned APG opposed the bail application and contends that the applicants are specifically nominated in the FIR with specific roles of causing injuries to women of the complainant's family; that the medical evidence fully supports the prosecution version; and that the allegations are serious in nature involving house-trespass and criminal intimidation, thus disentitling them from the concession of pre-arrest bail.

5. Heard and record perused.

6. It appears that in FIR complainant alleged that applicant/accused Ayoub inflicted three injuries with iron rod to his wife Mst. Parveen at forehead, nose and left eyebrow. The complainant further alleged that applicant/accused Ghulam Mustafa also inflicted injury to his paternal aunt Mst. Allah Bachai at left arm with the back of hatchet. The report of the MLO classifies the injuries received by Mst. Parveen wife of complainant two injuries as Shajjah-i-Khafifah under Section 337-A(i) PPC primary with Daman and for which imprisonment of either description for two years. So far injury No.3 it was classified as Shajjah-i-Munaqilah under Section 337-A(iv) PPC primary with Arsh and imprisonment of either description for ten years hence injury No.3 falls within the prohibitory clause under Section 497(i) CrPC. As regards the injury received by the paternal aunt of complainant Mst. Allah Bachai classified as Ghayar Jaifah Munaqqilah under Section 337-F(vi) primary with Daman and imprisonment of either description for seven years. Whereas the offence under Section 452 and 506(ii) PPC carry the punishment of seven years. Prima facie, sufficient material exists connecting both applicants with the commission of the alleged offences.

7. The defence plea that the FIR is false and lodged to counter earlier proceedings in Crime No.43 of 2025, or that there was a delay of 13 days in

lodging the FIR, does not appear convincing. The record reflects that the complainant party had sustained injuries and that medical evidence corroborates the occurrence. Minor delay in lodging the FIR, in the given circumstances, is not fatal nor sufficient to discard the prosecution version at this stage.

8. It is settled law that pre-arrest bail is an extraordinary relief, not to be granted as a substitute for post-arrest bail unless the applicant demonstrates that the case has been lodged with mala fide intention or ulterior motive. In the present case, no such exceptional circumstances have been shown. The allegations against the applicants are supported by medical evidence, and their roles are specifically mentioned in the FIR. Every hypothetical defence or contradiction that can be imagined would not make it a case of further inquiry, as such questions can only be answered at the trial after recording of evidence.

9. It is also well-settled law that at the bail stage only a bird's eye view of evidence is taken into consideration while deeper appreciation of evidence is not permissible, therefore, accused is required to establish a case of further inquiry. Of course, if it appears to the Court at any stage of trial that there are no reasonable grounds for believing that the accused had committed a non-bailable offence and there are sufficient grounds for further inquiry into his guilt, the accused shall be released on bail. While exercising such discretion, the Courts must always satisfy its conscience between existence or non-existence of 'reasonable grounds' to believe link of accused with offence, particularly when offence is falling within prohibitory clause. In every criminal case some scope for further inquiry into the guilt of accused exists, but on that consideration alone it cannot be claimed by the accused as a matter of right that he is entitled to bail. For bringing the case in the ambit of further inquiry, there must be some prima facie evidence, which on the tentative assessment, are sufficient to create doubt with respect to involvement of accused in the crime. In *Iqbal Hussain v. Abdul Sattar* (PLD 1990 SC 758) while setting aside the bail granting order of the High Court, the Court referred to the tendency in courts to misconstrue the concept of further enquiry and held as follows:

"It may straightaway be observed that this Court has in a number of cases interpreted subsection (2) of section 497 Cr.P.C which, with respect, has not been correctly understood by the learned Judge in the High Court. We hope it has been properly applied in this case. While we believe that it was a case of further inquiry which element, as it has been observed in number of times in many cases, would not entitle an accused to bail as of right. The main consideration on which the accused becomes entitled to be released under the said subsection is a finding, though not final, but tentative, arrived at by the court in respect of the merits of the case. If such finding or tentative assessment does avoid rendering some prima facie opinion, then on merits as is mentioned in subsection (2) of section

497 Cr.P.C, and relied only on the condition of further inquiry. This approach is not warranted by law. Hence, the case not being covered by subsection (2) of section 497 Cr.P.C, the respondent was not entitled to bail thereunder as of right.”

10. Each case has its own foundation of facts, therefore, it is not possible to put each and every case in the cradle of further inquiry to provide relief to accused by releasing on bail merely by repeating words of further inquiry or raising presumptions and surmises but such consideration must remain confined to tentative assessment of available material only.

11. In these circumstances, there appears sufficient prima facie material on record connecting the applicants Ghulam Mustafa and Muhammad Ayoub @ Ayooob with the commission of the alleged offences. Accordingly, they are not entitled to the extraordinary concession of pre-arrest bail.

12. Consequently, the instant pre-arrest bail application was dismissed vide my short order dated 25.09.2025, and the interim pre-arrest bail granted to the applicants vide order dated 01.09.2025 was recalled. These are the reasons in support thereof.

13. Needless to observe, the trial Court shall proceed independently on the basis of evidence adduced before it, uninfluenced by the observations made hereinabove.

JUDGE

Irfan Ali