

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Dr. Syed Fiaz ul Hassan Shah

Criminal Bail Application No.1964 of 2025

Applicants : 1. Syed Sharjeel Ali S/o Syed Irfan Ali
2. Muhammad Zahid S/o Abdul Sattar
through Mr. Saifullah Abbasi, Advocate

Complainant : Mst. Nazeeran Khatoon W/o Ghulam
Rasool through Mr. Ghulam Dastageer,
Advocate

Respondent : The State
through Ms. Rubina Qadir, Addl. P.G.

Date of hearing : 23.09.2025

Date of order : 23.09.2025

ORDER

Dr. Syed Fiaz Ul Hassan Shah, J. - Through this Bail Application, applicants/accused seek pre-arrest bail in Crime No.371/2025 for offence under Sections 337-F(v), 337-A(i) PPC registered at PS NKIA. Their bail plea has been declined by the learned Addl. Sessions Judge-VII/MCTC-02, Karachi Central [Trial Court] vide order dated 23.07.2025.

2. The facts are incorporated in the FIR as well as in the impugned order and do not need to be reproduced for the purposes of deciding the bail application.

3. Learned counsel for the applicants has argued that the contents of FIR are that victim/complainant got insight injuries while as per medical report, she got injuries as Shujah-i-Hashmia, for which maximum sentence provided under the law is five years. He further contends that due to the family dispute between two wives, Khula has also been filed by Mst. Tahira Begum through Family Suit No.1341/2025, which has been granted in her favour. He further contends that the complainant has also filed a Complaint under

Illegal Dispossession Act for a house which the applicants have legitimate rights. Lastly, he prays for confirmation of bail.

4. On the other hand, learned counsel for the complainant has got serious injuries; however, she wants to patch up the matter provided that the applicants may vacate the said house which they have illegally occupied. Learned Addl. P.G. supports the case of the complainant.

5. I have heard the learned counsel for the applicant, learned counsel for the complainant and learned Addl. P.G. and with their able assistance perused the record.

6. I have noted that there is contradiction in the contents of FIR and the medical report; even otherwise, medical report declared the injuries as Shujah-i-Hashmia for which maximum punishment provided under the law is five years. It is settled law by the Hon'ble Supreme Court of Pakistan that for the purposes of deciding bail, lesser sentence should be considered thereby making the case out of prohibitory clause. The offence does not fall within prohibitory clause and the dictum laid down by the Supreme Court of Pakistan that grant of bail in non-prohibitory is a matter of right and refusal is exception is attracted in presence case. It appears that the issue between the applicant and complainant is a family dispute over some distribution of property and for the purposes of settling the same, they have to invoke the family jurisdiction and file a Complaint under Illegal Dispossession Act. The assertion of the learned counsel for the applicants further confirms from the Complaint available at Page-55 of the Court's file as no role has been assigned to each applicants with regard to commission of offence in the FIR. Further, the prosecution has not shown apprehension that the Applicants if granted bail will damage the case of prosecution or that they would intimidate or influence the prosecution witnesses.

7. The doctrine of rule of consistency or equal treatment, traditionally applied by courts in cases of post-arrest bail, has now been authoritatively extended to pre-arrest bail jurisprudence. The Hon'ble Supreme Court of Pakistan, in its judgment ***Jamaluddin Rabail v. The State (Criminal Petitions No. 41-K & 42-K of 2023)***,

has laid down the principle that the doctrine of consistency is equally applicable in cases involving pre-arrest bail. The relevant portion of the judgment is instructive and delineates that although the considerations for grant of pre-arrest and post-arrest bail are generally distinct, where the role ascribed to both Applicant is identical, the denial of relief to one on the basis of procedural distinction would be illusory. It was observed that if the Applicant enjoying ad interim pre-arrest bail is denied relief solely on the ground that pre-arrest bail entails different considerations, while the co-accused is granted post-arrest bail on merits, then upon arrest, the petitioner would immediately become entitled to post-arrest bail on the plea of consistency. Such a situation would render the distinction academic and defeat the principle of equal treatment. Reliance is placed on the following precedents:

- *Muhammad Ramzan v. Zafarullah* (1986 SCMR 1380)
- *Kazim Ali and others v. The State and others* (2021 SCMR 2086)
- *Muhammad Kashif Iqbal v. The State and another* (2022 SCMR 821)
- *Javed Iqbal v. The State through Prosecutor General of Punjab and another* (2022 SCMR 1424)

8. Furthermore, the principles governing the grant of pre-arrest bail have been elaborated by the Hon'ble Supreme Court in ***Rana Muhammad Arshad v. Muhammad Rafique and another* (PLD 2009 SC 427)**, wherein it was held that such relief should be confined to cases where a good prima facie case is made out in respect of the alleged offence; the denial of bail would result from some ulterior motive aimed at injuring the applicant; or the applicant would suffer irreparable harm if bail is refused.

9. The jurisprudence governing the grant of bail is fundamentally anchored in the principle of reasonableness, requiring a tentative assessment of each case on its own merits and factual matrix. This assessment is not merely procedural but is informed by the broader analogy that, should the accused ultimately be acquitted after prolonged trial proceedings, the criminal justice system does not provide any statutory mechanism for reparation or compensation for the extended period of incarceration endured under unproven charges. It is, therefore, legally and morally untenable to keep an

accused person incarcerated indefinitely while awaiting the conclusion of trial, especially when such proceedings may culminate either in conviction or acquittal. In the latter scenario, the absence of statutory remedies for wrongful or prolonged detention underscores the necessity of bail as the only viable safeguard against irreparable harm. This principle has been consistently recognized and developed by the Superior Courts of Pakistan, which have emphasized the doctrine of *tentative assessment*—a judicial tool that enables courts to evaluate the sufficiency of material available at the bail stage without delving into conclusive findings. Each case must be assessed independently, with due regard to its peculiar facts and circumstances. In the present matter, upon conducting such tentative assessment and examining the statutory framework, it is evident that the case does not fall within the prohibitory clause of Section 497 of the Criminal Procedure Code. Accordingly, the considerations for grant of bail remain governed by the settled principles of law and judicial discretion.

11. In view of the above, the instant bail application is allowed. The interim pre-arrest bail granted to the applicants vide order dated 29.07.2025 is hereby confirmed on same terms and condition.

12. It is clarified that the observations made hereinabove are tentative in nature and shall not prejudice the trial Court, which shall decide the case strictly on its merits and in accordance with law.

JUDGE

Kamran/PS