

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Bail Application No. S-299 of 2025

along with
Criminal Bail Application No. S-311 of 2025

Date	Order with signature of Judge
Applicant Sajjad son of Muhammad Moosa Shaikh Machi (in custody) in Cr. B. Appl, No.S-299 of 2025	: Through Mr. Irfan Badar Abbasi, Advocate
Applicant Fayaz son of Sajjan Kolachi (present on bail) in Cr. B. Appl. No.S-311 of 2025	: Through M/s. Noor Hussain Jatoi & Insaf Ali Jogro, Advocates
The State	: Through Mr. Ali Anwar Kandhro, Addl. Prosecutor General, Sindh along with Dr. Ghulam Mustafa (G.M Magsi), S.M.O THQ Hospital Mehar & ASI Ali Akbar Shah, I.O of the case.
Date of Hearing	: 22.09.2025
Date of Order	: 22.09.2025

ORDER

Muhammad Saleem Jessar, J:- By this common order, I propose to dispose of these two bail applications viz. Criminal Bail Application No.S-299 of 2025 filed by applicant Sajjad under Section 497 Cr.P.C as well as Criminal Bail Application No.S-311 of 2024 filed by applicant Fayaz Kolachi under Section 498 Cr.P.C, as both arise out of one and same crime; hence, a common question of law as well as facts is involved. The applicants preferred their bail plea(s) before the Court of Sessions vide Criminal Bail Applications No.944 and 920 of 2025, which subsequently were assigned to learned 2nd Addl. Sessions Judge, Mehar, who by way of two separate orders, both dated 24.05.2025 declined their request. Hence, these applications.

2. Since facts of the prosecution case are already mentioned in the FIR, which is annexed with Court file(s), therefore, there is no need to reproduce the same.

3. Learned counsel for the applicant Fayaz Kolachi places on record certified copy of case diaries dated 13.09.2025 & 16.09.2025 issued by the Civil Judge & JM-III, Mehar, showing surrender of the applicant before it (the trial Court).

4. Learned counsel submits that the incident had occurred on 13.05.2025 at 0845 hours of the evening whereas report thereof was lodged on 16.05.2025 at 1700 hours i.e. with delay of about three days for which no plausible explanation has been furnished by the prosecution for such an inordinate delay. He next submits, though the applicant Sajjad Shaikh Machi was arrested by the police on 17.05.2025; however, nothing incriminating has been shown to have been recovered from his possession or was produced by him during investigation. Besides the offence with which the applicants have been charged with almost are bailable except section 397, PPC, which carries maximum punishment up to seven years, hence does not exceed the prohibitory clause of Section 497, Cr.P.C. In support of their contention they place their reliance on the cases of *Ishaq v. The State* (**SBLR 2019 Sindh 2043**), *Abid alias Aabi Arain v. The State* (**2016 P.Cr.LJ 109**), *Ali Akbar v. The State* (**2011 P.Cr.LJ 445**), *Gul Bahar and another v. The State* (**2011 P.Cr.LJ 985**), *Muhammad Imran and another v. The State* (**2025 MLD 291**). They; however, submit that the case against the applicants requires further enquiry, hence, by granting these applications, they (applicants) may be admitted to bail.

5. Learned Addl. P.G appearing for the State opposes the bail applications on the ground that the accused are nominated in the FIR; besides, at the time of alleged robbery they have caused injuries to the prosecution witnesses hence are not entitled for the relief sought for.

6. Learned counsel for the complainant while adopting the arguments advanced by learned Addl. P. G opposes the bail applications and submit that the offence is against society; besides,

outlaws of the area including the applicants being hardened criminals have made lives of the inhabitants miserable, therefore, they are not entitled for the bail. In support of his contention, he has relied upon the cases of *Muhammad Saleem v. The State* (2018 P.Cr.LJ Note 182), *Adnan alias 13-D v. The State* (2019 YLR Note 47) and *Muhammad Hussain v. The State* (2023 P.Cr.LJ Note 30).

7. Heard arguments of learned counsel for the applicants, learned Addl. P.G for the State and learned counsel for the complainant and perused the material made available on record with their able assistance.

8. Admittedly, the FIR is delayed for about three days for which no plausible explanation has been furnished by the prosecution for such an inordinate delay. The delay in criminal cases has always been held by the superior Courts to be fatal for the prosecution. Nothing incriminating has been shown to have been recovered from possession of the applicants nor was produced by them during investigation through which it could be deduced that they have nexus or connection with the crime as alleged. The case has been challaned which is now pending for preliminary proceedings before the Court of Civil Judge/JM-III, Mehar in terms of dicta laid down by the learned apex Court as reported (PLD 2010 Supreme Court 585). As far as alleged injuries are concerned, the role attributed to applicant Fayaz Kolachi is he allegedly caused Pistol butt blow to PW Ali Ahmed Brohi which landed on his right shoulder but the injury so sustained has been declared by the Medico legal Officer to be punishable as *Jurh Ghyr-Jaifah Damiah* falling under section 337-F(i), PPC carrying one year punishment whereas, accused Sajjad Shaikh Machi allegedly caused Pistol butt blow to complainant Asif Ali which landed on his head. The injuries so sustained by the complainant has been declared by the Medico Legal Officer to be *Shajjah-i-Khafifah* falling under section 337-A(i), PPC carrying two years punishment and is bailable. Since the FIR is delayed for about three days and no recovery has been effected from their possession or was recovered on their pointation. Hence, accusation against them to that extent is yet to be established by the prosecution after recording evidence through its witnesses. As far as injuries allegedly

attributed to the applicants are concerned, same are simple in nature and carrying minor punishment; besides, are bailable. The grant of bail in bailable offences as has been laid down by learned apex Court in case of *Tariq Bashir and 5 others v. The State* (**PLD 1995 Supreme Court 34**) is right and refusal will be an exception. Hence the injuries so attributed to the applicants and allegedly sustained by the P.Ws are yet to be established through medical evidence and then the trial Court being competent has to determine such an accusation against the accused. As far as these bail applications are concerned, in view of discussion whatever has been made hereinabove and in view of dicta laid down by learned apex Court in case of *KHALIL AHMED SOOMRO AND OTHERS Vs. THE STATE* (**PLD 2017 Supreme Court 730**), and case of *Muhammad Tanveer v. The State* (**PLD 2017 SC 733**), the case against the applicants requires further enquiry in terms of sub section (2) to Section 497, Cr.P.C. Consequently, both applications are hereby allowed. Ad-interim bail granted to accused Fayaz Kolachi in terms of order dated 11.06.2025 is hereby confirmed on same terms and conditions, whereas, applicant Sajjad Shaikh Machi in connected Crl. B.A.No.S-299 of 2025 is also hereby directed to be released on bail subject to his furnishing solvent surety in the sum of Rs.50,000/- and P.R bond in the like amount to the satisfaction of learned trial Court.

9. Needless to mention here that the observations made hereinabove are tentative in nature, which shall not prejudice the case of either party at trial.

10. Office to place a signed copy of this order in the connected bail application/file.

JUDGE

M.Y.Panhwar/**