

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

## Criminal Bail Application No.S-400 of 2025

**Applicants** : 1. Muhammad Hashim s/o Sher Muhammad  
2. Dur Muhammad s/o Arz Muhammad  
3. Sher Muhammad s/o Dur Muhammad  
Through Mr. Sajjad Ahmed Chandio, advocate.

**Complainant** : Sajjan Khan through Mr. Ahsan Gul Dahri,  
advocate.

**Respondent** : The State, through Mr. Khalid Hussain Lakho,  
Deputy Prosecutor General.

**Date of hearing** : **15.08.2025**  
**Date of order** : **18.09.2025**

## ORDER

**TASNEEM SULTANA, J.**, Through this bail application, the applicants/accused namely Muhammad Hashim son of Sher Muhammad, Dur Muhammad son of Arz Muhammad, and Sher Muhammad son of Dur Muhammad seek post-arrest bail in Crime No.15 of 2024 registered at Police Station Kazi Ahmed under sections 302, 324, 506(ii), 147, 148, 149, 337-L(ii), 337-A(i), 337-A(ii), 337-F(i), 337-F(iii) and 337-F(iv) PPC, after their bail plea was declined by the learned 1st Additional Sessions Judge / Model Criminal Trial Court, Shaheed Benazirabad, vide order dated 20.03.2025.

2. The prosecution case, as set out in the FIR, is that the complainant, Sajjan Khan son of Photo Khan Zardari, appeared at Police Station Kazi Ahmed on 17.01.2024 at about 1430 hours, stating that on 16.01.2024 at about 5:00 p.m when each one Abdul Hafeez, Faryaz, and Sikandar Ali, workers of Tehreek-e-Labaik Pakistan, were running election campaign near Village Fatoohal Zardari, they were stopped near Beganah Mori by applicants Sher Muhammad, Dur Muhammad and Muhammad Hashim, belonging to Pakistan People's Party, who extended murderous threats warning them to stop their election campaign or face death. On this, Sikandar Ali replied that they should mind their own work, whereupon a quarrel ensued; Sher Muhammad fired at Faryaz hitting him on his thigh, while Dur Muhammad and Hashim caused head injuries to Abdul Hafeez and Sikandar Ali with iron rods. On a phone call by Sikandar Ali, Photo Khan (later deceased) and Hafiz Saifal reached the spot, whereupon co-accused Arz Muhammad (armed with a rifle), Younis (armed with a pistol) and Atta Muhammad (armed with an iron rod) were already present in attacking position, and firing was made from behind. As a result, Photo Khan received a firearm injury and succumbed on the way to hospital, Hafiz Saifal also sustained a firearm injury and was further assaulted with iron rod blows, while the others

sustained injuries. The injured narrated the incident to the complainant at hospital, postmortem of deceased was conducted, medical certificates of the injured were obtained and they were referred to PMC Nawabshah. The complainant further alleged that accused Arz Muhammad had previously been issuing threats to stop their campaign, which culminated in the present occurrence.

3. Learned counsel for the applicants contended that the applicants are innocent and falsely implicated due to political rivalry; that the medical record is inconsistent with the allegations, as the injuries declared by the Special Medical Board do not support the firearm attribution in the FIR, and several injuries are inconsistent with the narration of the occurrence; that such contradictions make the case one of further inquiry under section 497(2) Cr.P.C; that there was an unexplained delay of twenty-four hours in lodging the FIR and that a counter FIR (Crime No.59/2024) lodged by the accused side supports the defence version; that on the principle of parity, co-accused Atta Muhammad has already been granted bail. In support of his contentions the counsel has placed reliance upon the case of Muhammad Hussain vs. The State (1982 SCMR 227), Lt. Gen. (Retd) Fazl-e-Haq vs. The State (1989 SCMR 1724), Manzoor Hussain and another vs. The State (2011 SCMR 902), Syed Khalid Hussain Shah vs. The State and another (2014 SCMR 12), Awal Khan and 7 others vs. The State through Ag-KPK and another (2017 SCMR 538), Akhtar Ullah alias Akhtar Ali vs. The State and another (2021 SCMR 1287), Saeed Yousaf vs. The State and another (2021 SCMR 1295), Muhammad Ameen vs. The State and another (2022 SCMR 1444), Gul Muhammad vs. The State (2023 SCMR 857), Khizar Hayat vs. The State and others (2024 SCMR 1605), Nazeer vs. The State (2018 P Cr.L.J Note 42 Sindh), Nawaz Ali Jatt and another vs. The State (2020 P Cr.L.J Note 89 Sindh), Ali Sher and another vs. The State (2022 P Cr.L.J Note 33 Sindh), Abdul Razzaq vs. 1<sup>st</sup> Additional Sessions Judge and another (2015 YLR 2595) and Roshan Ali Shaikh and others vs. Pakistan through Secretary Ministry of Law and others (2023 YLR 943).

4. Conversely, learned counsel for the complainant, assisted by learned Prosecutor, vehemently opposed the application and contended that the applicants are specifically named in the FIR with distinct roles; that the ocular account of injured witnesses under section 161 Cr.P.C. supports the allegations and is corroborated by medical evidence; that delay in FIR has been reasonably explained, and earlier bail applications have already been dismissed by the trial Court and by this Court. Learned counsel for the complainant has placed reliance upon the case of Amir Masih vs. The State and another (2013 SCMR 1059) and Yar Muhammad Khan vs. The State and another (2024 SCMR 1738).

5. At the stage of bail, the Court is not required to record findings on merits but only to make a tentative assessment of the material collected during investigation. The settled principle is that where reasonable grounds exist to believe that the accused is connected with the commission of a heinous offence falling within the prohibitory clause of section

497 Cr.P.C, the concession of bail is ordinarily to be withheld unless the case appears to call for further inquiry within the meaning of subsection (2) thereof.

6. On tentative assessment of the record, it is evident that the applicants stand specifically named in the FIR with clear allegations. It is alleged that applicant Sher Muhammad was armed with a rifle and fired upon Faryaz causing firearm injury on his thigh, while the other applicants, Dur Muhammad and Muhammad Hashim, armed with iron rods, caused head injuries to Abdul Hafeez and Sikandar Ali. The version of the complainant is supported by the statements of the injured eyewitnesses recorded under section 161 Cr.P.C, who have consistently implicated the applicants. Being natural witnesses and injured in the same occurrence, their statements cannot be ignored at this stage and lend support to the prosecution version, while Photo Khan aged about 28/30 years after receiving firearm injuries succumbed to injuries.

7. The argument advanced by learned counsel for applicants that contradiction between the medical and ocular account makes the case of further inquiry, as FIR attributes firearm injuries to Faryaz, but the Special Medical Board opined that injuries were caused by the blunt means and few injuries were old, this argument is not persuasive. Medical evidence, by its nature, is corroborative and supportive; it cannot, at the bail stage, be used to discard the direct statements of injured eyewitnesses because the accused are nominated with specific role.

8. Delay in lodging the FIR has also been pressed into service. The record shows that the FIR was lodged on the following day after postmortem of the deceased and medical formalities of the injured were completed. Such delay stands reasonably explained and does not cast doubt on the prosecution case.

9. The plea of parity with co-accused Atta Muhammad, who has been granted bail, is misconceived. The allegations attributed to Atta Muhammad are distinguishable, as he is not alleged to have used a firearm, while the present applicants are specifically named with more direct roles of causing firearm injury and head injuries. It is settled law that the principle of parity is not to be applied mechanically, but each case is to be examined on its own facts.

10. It is now well settled law that at the bail stage only a bird eye-view of evidence is to be 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 the 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 conscious between existence or non-existence of "reasonable grounds" to believe link or otherwise of

accused with offence particularly when offence is falling within prohibitory clause. In every criminal case some scope of further inquiry into the guilt of the accused is 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 of involvement of accused in the crime. In *Iqbal Hussain vs. Abdul Sattar and another* (PLD 1990 SC 758) while setting aside the bail granting Order of the High Court, the apex Court referred to the tenancy in Courts to misconstrue the concept of further inquiry 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 nor has it been properly applied in this case. While he thought that it was a case of further inquiry which element as has been observed number of times in many cases, would be present in almost every case of this type. The main consideration on which the accused becomes entitled to bail under the said subsection is a finding, though prima facie, by the Police or by the Court in respect of the merits of the case. The learned Judge in this case avoided rendering such prima facie opinion 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.*

11. The combined effect of the material on record, when viewed in the light of the above authorities, prima facie indicates that sufficient grounds exist to believe that the applicants participated in the occurrence. On tentative assessment, their case does not fall within subsection (2) of section 497 Cr.P.C. The offence with which they are charged squarely falls within the prohibitory clause and attracts the settled principle that bail is to be declined in such cases.

12. For the foregoing reasons, the bail application filed by applicants Muhammad Hashim, Dur Muhammad, and Sher Muhammad stands **dismissed**. Needless to add, all observations made herein are tentative in nature and confined to the bail stage, and shall not prejudice the trial Court in deciding the case on merits.

**J U D G E**