

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S-752 of 2025

Applicant : Muhammad Saleh s/o Ranjhan Khan, Shambani
Through Mr. Sikandar Ali Panhwar, Advocate

Complainant : Hyder Ali s/o Awwal Khan @ Awwal Khabar
Through Mr. Mehboob Ali Wassan, Advocate

The State : Through Mr. Mansoor Ahmed Shaikh, DPG

Date of hearing : 15.12.2025

Date of Short order : 15.12.2025

O R D E R

KHALID HUSSAIN SHAHANI, J.— Applicant, Muhammad Saleh Shambani, seeks the concession of pre-arrest bail in a case bearing crime No.63 of 2025, for offences under Sections 324, 506/2, 148 and 149 PPC, registered at Police Station Kotdiji, District Khairpur. The applicant's similar plea for pre-arrest bail was earlier declined by the learned Additional Sessions Judge-I/MCTC, Khairpur, vide order dated 20.08.2025.

2. As per the F.I.R. lodged on 30.05.2025 by complainant Hyder Ali, the parties are at loggerheads on account of a prior incident in which, about twenty years ago, the brother of the accused party was murdered and, according to the F.I.R, they suspect the complainant's side to be behind that occurrence. On this premise, it is alleged, the accused party had been extending threats of dire consequences.

3. It is further alleged that on 27.05.2025, at about 8:30 a.m, the complainant, his brother Khan Muhammad, their maternal uncle Ghulam Shabir and other family members were present in their house when accused Muhammad Saleh (applicant) and one Motan, both armed with pistols, accused Sanaullah armed with lathi, accused Mahboob armed with gun, along with an unidentified person, entered their house. It is alleged that the applicant Muhammad Saleh made a straight fire upon complainant's brother Khan Muhammad, which hit him on his left thigh, whereupon the injured fell down

after raising cries. On hearing the hue and cry, villagers rushed to the spot, at whose sight the accused allegedly decamped. The injured was then taken to the police station for issuance of letter for treatment, thereafter to Taluka Hospital Kotdiji, from where he was referred to the Civil Hospital, Khairpur, and ultimately the present F.I.R was lodged.

4. Learned counsel for the applicant contended that the applicant has been falsely roped in due to admitted enmity and long-standing grudge between the parties. It was next contended that there is a delay of three days in lodging the F.I.R, despite the fact that the police station is situated at a short distance from the place of occurrence, which, according to counsel, creates a serious doubt regarding the spontaneity and truthfulness of the prosecution story and gives room for consultation and deliberation. All the eye-witnesses cited are closely related to the complainant, namely his real brother and maternal uncle, and no independent person from the locality, although allegedly present, has been associated as a witness, which diminishes the reliability of the ocular account at this stage. The injury attributed to the applicant is located on a non-vital part of the body, i.e., the left thigh, and the medico-legal officer has opined it to be *Ghayr-Jaifah Mutalahimah*, falling under Section 337-F(iii) PPC, carrying a maximum punishment of three years, which does not bring the case within the prohibitory clause of Section 497(1) Cr.P.C. Learned counsel further submitted that during investigation the investigating officer himself recommended disposal of the case in 'B' class, which is reflective of serious doubts and infirmities in the prosecution version. Although the learned Magistrate disagreed and took cognizance, this divergence of views between the investigating agency and the Court itself shows that the matter is one requiring evidence and deeper probe at trial. It was also contended that investigation has now been completed, challan has been submitted before the trial Court, the applicant has been on interim pre-arrest bail since 25.08.2025, has remained associated with the

investigation, and has not misused the concession of interim pre-arrest bail nor attempted to tamper with the prosecution evidence or influence any witness. On these premises, learned counsel argued that the case is one of further inquiry within the contemplation of Section 497(2) Cr.P.C. and thus the applicant is entitled to confirmation of pre-arrest bail, particularly when his custody is no longer required for the purpose of investigation.

5. Conversely, learned Deputy Prosecutor General, duly assisted by learned counsel for the complainant, opposed the confirmation of interim pre-arrest bail. It was argued that the applicant is specifically named in the F.I.R with an attributed, defined and active role of having fired directly at the injured Khan Muhammad, and thus his involvement is not a matter of mere suspicion. The ocular account finds support from the medico-legal report, which confirms the firearm injury on the person of the injured, and the statements of the eye-witnesses recorded under Section 161 Cr.P.C are claimed to be consistent and in line with the contents of the F.I.R. The delay of three days, according to the prosecution, stands reasonably explained on the ground that the first priority of the complainant party was to save the life of the injured, who had to be shifted from the place of occurrence to the police station and thereafter to different hospitals, including Taluka Hospital Kotdiji and Civil Hospital Khairpur. It was further argued that the recovery of the crime weapon is still outstanding and custodial interrogation of the applicant may be necessary for this purpose. On these grounds, it was urged that no case for confirmation of pre-arrest bail is made out.

6. The relief of pre-arrest bail is indeed of an extraordinary nature, meant primarily to prevent abuse of process of law and undue harassment by way of mala fide or ulterior motives; it is not to be granted as a matter of course. At the same time, the settled law is that where, on tentative assessment, the court discerns circumstances suggesting mala fide, ulterior motive, or where the case falls within the ambit of further inquiry and does not

attract the prohibitory clause of Section 497(1) Cr.P.C., the concession of pre-arrest bail may be extended, subject to judicial discretion.

7. In the instant case, certain features of the prosecution case, when viewed collectively and not in isolation, call for serious consideration at this stage:

- *Firstly*, the existence of previous enmity between the parties is an admitted position. The F.I.R itself acknowledges that there was a longstanding dispute owing to the murder of the accused party's brother about twenty years ago. While such enmity can provide a motive for commission of the crime, the same can also serve as a strong reason for false implication and exaggeration. At the pre-trial stage, this factor has to be weighed cautiously in favour of both possibilities.
- *Secondly*, there is a delay of three days in lodging the F.I.R. The occurrence is alleged to have taken place on 27.05.2025 at 8:30 a.m., while the F.I.R was registered on 30.05.2025. Although the prosecution has offered an explanation of attending the injured and his shifting for medical treatment, the fact remains that the police station was admittedly at a short distance. The reasonableness and sufficiency of such explanation is a matter to be examined in depth by the trial Court, but at this stage, such delay, in a case arising out of admitted enmity, reasonably opens up room for deliberation, consultation and possible fabrication, thereby bringing the matter within the zone of further inquiry.
- *Thirdly*, the injury attributed to the applicant is on a non-vital part of the body, i.e., the left thigh. The medico-legal certificate shows that the injury has been classified as *Ghayr-Jaifah Mutalahimah*, falling under Section 337-F(iii) PPC, punishable with imprisonment which may extend to three years. Thus, the section actually attracted by the medical opinion does not fall within the prohibitory clause of Section 497(1) Cr.P.C. While Section 324 PPC has been applied in the F.I.R. as an allegation of attempt to commit

qatl-i-amd, the nature, seat and classification of the injury, at this stage, raise a debatable question as to whether the requisite intention or knowledge, as contemplated by Section 324 PPC, is clearly made out. This again appears to be a question requiring evidence and deeper scrutiny at trial and, for present purposes, tilts the case towards further inquiry within the meaning of Section 497(2) Cr.P.C.

- *Fourthly*, the record reflects that during investigation the case was proposed to be disposed of under 'B' class by the investigating officer. Although the learned Magistrate did not agree with that recommendation and took cognizance, this divergence of opinion itself is indicative that the case is not free from doubt at this preliminary stage. Where even the investigating agency entertained such doubts as to the truthfulness or sufficiency of the F.I.R version, the matter cannot be treated as one of clear-cut guilt but as one requiring determination on the basis of evidence to be led at trial.
- *Fifthly*, the medical classification of the injury has not gone unchallenged. It is stated that the matter has been referred to a medical board and its report is still awaited. Until such report is received, the medical aspect of the case remains fluid and unsettled, which again reinforces the inference that the case is one of further inquiry.

8. Another relevant consideration is the conduct of the applicant during the pendency of his interim pre-arrest bail. The applicant has been on interim pre-arrest bail since 25.08.2025, i.e for about three months. It has not been pointed out that during this period he either misused the concession of bail, absented himself from the investigation, attempted to tamper with the prosecution evidence, or intimidated any witness. The investigation has now concluded and the challan has been submitted before the competent court. In these circumstances, the need for custodial arrest of the applicant, at this stage, does not appear to be compelling.

9. The case, on tentative assessment, thus presents a combination of (i) admitted enmity, (ii) delayed F.I.R., (iii) non-vital, non-prohibitory injury as per present medical opinion, (iv) prior recommendation of 'B' class by the investigating officer, and (v) unblemished conduct of the applicant on interim pre-arrest bail with investigation already completed. This cumulative picture squarely brings the matter within the purview of further inquiry as envisaged under Section 497(2) Cr.P.C., where benefit of doubt, for the limited purpose of bail, is to be extended to the accused.

10. It is well-settled that where the offence does not fall within the prohibitory clause of Section 497(1) Cr.P.C., grant of bail is a rule and refusal an exception, and the principles applicable to post-arrest bail also guide the exercise of discretion in matters of pre-arrest bail, particularly when mala fide or the possibility of misuse of the process of law cannot be ruled out at this stage.

11. In view of the foregoing circumstances and for the reasons discussed hereinabove, the case against the present applicant calls for further inquiry within the meaning of Section 497(2) Cr.P.C. The interim pre-arrest bail granted to the applicant vide order dated 25.08.2025 is, therefore, confirmed on the same terms and conditions.

12. Needless to observe that all the observations made herein are purely tentative, confined to the decision of the present bail application, and shall not prejudice the case of either party nor shall they influence the learned trial Court while deciding the matter on merits.

J U D G E