

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail appln.No. S-575 of 2025

Applicant : Shahzado Khan @ Zado s/o Mumtaz Hussain, Junejo
Through M/s Saeed Jamal Lund & Muhammad Yaseen Baloch, Advocates

Complainant : Mst. Mahla Khatoon w/o Allah Rakhiyo, Junejo
Through Mr. Ghulam Rasool Chandio, Advocate

The State : *Through* Mr. Shafi Muhammad Mahar, DPG

Date of hearing : 11.12.2025
Date of order : 18.12.2025

O R D E R

KHALID HUSSAIN SHAHANI, J. – Applicant Shahzado @ Zado, seeks pre-arrest bail under Section 498 Cr.P.C in a case bearing crime No.18/2025, for the offences allegedly committed under Sections 364, 302, 404, 148, 149, 337-H(2), and 114 PPC, registered at Police Station Ranipur, District Khairpur. The bail of the applicant was declined by the court of learned Additional Sessions Judge, Gambat, vide order dated 04th July, 2025.

2. The complainant, Mst. Mahla Khatoon, lodged FIR No.18/2025 at Police Station Ranipur on 12th February, 2025 at 1400 hours. According to the narrative contained in the FIR, on 11th February, 2025 at about 1200 hours, the complainant, along with her deceased son Gulshan aged 35-36 years, and two daughters, Mst. Shamshad and Mst. Naseeba, were returning to their village from Gambat after purchasing household items on a motorcycle. When they reached near the Government Tube Well on the link road between Gambat and Ranipur, they were allegedly intercepted by twelve armed accused persons, including the present applicant Shahzado, who were standing on the road with six motorcycles parked nearby. According to the FIR, these accused persons forcibly stopped the motorcycle and kidnapped the complainant party with the intention to commit murder. The complainant alleges that they were taken to village Waryo Wahan, where additional accused persons numbering around ten were standing. The FIR further alleges that at Waryo Wahan, an accused woman

named Mst. Azeema instigated the other accused to commit the murder of Gulshan, and thereupon, the accused, including those named in the FIR, made direct firing upon Gulshan, resulting in multiple firearm injuries and his death. The FIR also mentions that Rs.15,000/- and a mobile phone were robbed from the deceased's pocket.

3. The learned counsel for the applicant contended that the applicant has been falsely and maliciously implicated in a criminal case fundamentally rooted in a property dispute between the complainant and Mst. Azeema, a fact expressly admitted in the FIR itself, with the applicant standing completely outside this dispute and being unnecessarily drawn in to harass him collaterally. The learned counsel highlighted a glaring delay of about twenty-six hours in the lodging of the FIR without plausible explanation, which, given the distance of merely three-quarter kilometers between the alleged place of incident and the police station, was characterized as highly suspicious and indicative of consultations and deliberations to construct and fabricate the narrative against multiple accused. Regarding the quality of evidence, the learned counsel submitted that all witnesses cited in the FIR are blood relatives and highly interested parties of the complainant with no independent, disinterested witness cited despite the alleged incident occurring on a populated link road where other travelers or passersby would reasonably have been present. Furthermore, the learned counsel submitted that the FIR contains only general allegations of firing against multiple accused without attributing any specific, distinguishable, or individualized acts, roles, or injuries to the applicant, who is merely described as one of twelve armed persons present at the initial spot without further detail regarding his specific participation or direct involvement. The learned counsel placed substantial reliance on the investigating officer's own findings, which categorically recommend the release of the applicant due to lack of evidence, submitting that the investigating officer has recorded statements of independent witnesses namely Nazar Hussain Shaikh, Hatim Jamro, and Mashooq Ali Bhatti

who have disclosed the applicant's innocence and established his presence at his residential otaq near the National Highway Way road in Ranipur between 1200 and 1500 hours on the alleged date and time of the incident, while other independent witnesses present at the actual place of incident namely Wazir Ali Junejo, Khalid Hussain, and Muneer Ahmed Junejo have stated that the applicant was not present at the spot. Most significantly, the learned counsel brought to the Court's attention the investigating officer's own note in the case file recording that "present complaint party also declared that alleged Shahzado @ Zado was not present on spot," amounting to a direct and explicit admission by the complainant herself that she did not witness the applicant's presence at the place of incident. The learned counsel further emphasized that the applicant has already been granted pre-arrest bail by the District and Sessions Judge, Khairpur, demonstrating the merit of the applicant's case and the recognition by a competent court of the weakness of the prosecution's allegations, and concluded that at the pre-arrest stage when investigation is still ongoing and credible evidence linking the applicant to the crime is conspicuously absent, the scales of justice must necessarily tip in favor of the applicant based on the principle of presumption of innocence, thereby making out a strong and compelling case for the grant of pre-arrest bail.

4. The learned counsel for the complainant submitted that the crime in question is of an exceedingly grave nature involving charges of murder and kidnapping, both non-bailable offences under Sections 364 and 302 of the Pakistan Penal Code, respectively, and that the seriousness of the allegations cannot be minimized merely by the existence of property disputes or the delay in lodging the FIR. The learned DPG argued that the postmortem report conclusively establishes that the deceased sustained multiple firearm injuries including entry and exit wounds, which indicates a planned and orchestrated firing involving multiple perpetrators demonstrating an organized criminal enterprise. The learned DPG submitted that the one-day delay in lodging the

FIR is adequately explained by the practical necessities of arranging transport of the deceased's body to the police station, obtaining the letter for postmortem examination from the concerned authority, and conducting the postmortem examination itself from the Government Hospital. The learned DPG further submitted that the general principle that the investigating officer's recommendation does not bind the Court is applicable in the present case, and that the FIR contains sufficient material which implicates the applicant as one of the twelve persons present at the initial spot with deadly weapons who participated in the abduction and subsequent events leading to the death of Gulshan. The learned DPG contended that the presence of the applicant at the spot with deadly weapons, coupled with his participation in the kidnapping and the subsequent chain of events, connects him sufficiently to the crime at the tentative assessment stage to warrant application of the prohibitory clause. The learned DPG clarified that at the bail stage, the Court is not required to conduct a deeper appreciation of the evidence but only a tentative assessment to determine whether reasonable grounds exist for believing that the applicant committed the alleged offence, and argued that the gravity of the offence and the specific involvement of the applicant in the criminal enterprise fall within the prohibitory clause of Section 497 Cr.P.C, thereby disentitling the applicant to the extraordinary relief of pre-arrest bail.

5. Before delving into the merits of this bail application, it is imperative that the Constitution of the Islamic Republic of Pakistan, in Article 10 thereof, guarantees protection against arrest without lawful authority. Section 498 Cr.P.C provides that any Court may, in its discretion, grant pre-arrest bail to a person against whom a charge of committing an offense is about to be made or has been made. However, this discretion is not absolute and is circumscribed by the principles established through consistent jurisprudence. The grant of pre-arrest bail is an extraordinary relief meant to protect innocent persons from malafide action, harassment, or unwarranted arrest by police

authorities or motivated complainants. Reliance is placed on the case of *Rana Muhammad Arshad* (2017 SCMR 427).

6. Upon merits, this Court is compelled to note several factors that weigh heavily in favor of the applicant and that militate against the continuation of custody without bail. First and foremost is the express recommendation by the Investigating Officer, Insp. Mohammad Aslam Leghari, for the release of the applicant under Section 497(II) Cr.P.C. due to lack of sufficient evidence. While it is correct that the investigating officer's recommendation does not absolutely bind the Court, it carries considerable weight and is entitled to serious consideration, particularly when the recommendation is accompanied by detailed factual findings. In the present case, the investigating officer has not merely recommended release but has specifically recorded that he has examined the scene of occurrence, recorded statements of independent witnesses who corroborate the applicant's alibi, and found no credible evidence connecting the applicant to the crime. The placement of the applicant's name in Column No.2 of the charge sheet is a formal indication that the investigating officer has found insufficient evidence against the applicant to proceed to trial.

7. The investigating officer's record states that he has recorded the statement of the applicant under Section 161 Cr.P.C, wherein the applicant disclosed his innocence and showed his presence at his residential *otaq* (sitting area) near the National Highway Way road in Ranipur with his friends, namely Nazar Hussain Shaikh, Hatim Jamro, and Mashooq Ali Bhatti, on the alleged date and time of the incident, specifically between 1200 and 1500 hours on 11th February, 2025. Most significantly, the investigating officer has corroborated this alibi by recording the statements of these independent witnesses who have endorsed the applicant's presence at the otaq on the relevant date and time. Furthermore, the investigating officer has recorded the statements of other witnesses who were actually present at the spot of occurrence, namely Wazir Ali Junejo, Khalid Hussain, and Muneeb Ahmed Junejo, and these witnesses

have stated that the applicant was not present at the spot. The most damaging evidence for the prosecution is the note in the investigating officer's report which explicitly records that "present complaint party also declared that alleged Shahzado @ Zado was not present on spot." This is an admission from the complainant's own mouth, as recorded by the investigating officer, that the complainant herself did not witness the applicant's presence at the place of occurrence.

8. The fact that the complainant the primary eyewitness to the alleged abduction and the key witness to the events at the Gambat-Ranipur link road has stated that the applicant was not present at the spot is a factor of extraordinary significance. The applicant is alleged to have been one of twelve armed persons who stopped the motorcycle, kidnapped the complainant party, and took them to Waryo Wahan. If the complainant did not witness the applicant's presence at the spot where the abduction allegedly occurred, then the foundation of the allegation against the applicant crumbles. The FIR itself becomes suspect in its attribution of the applicant's presence and participation in these initial events. This Court must also address the matter of the inordinate and inadequately explained delay in the lodging of the FIR. The alleged occurrence took place on 11th February, 2025 at about 1200 to 1445 hours, yet the FIR was not lodged until 12th February, 2025 at 1400 hours. This represents a delay of about twenty-six hours. The explanation offered that the complainant had to arrange for the transport of the deceased's body, obtain the letter for postmortem from the police, and conduct the postmortem examination appears inadequate when one considers that the distance between the alleged place of incident and the police station is merely three-quarter kilometers. The police station could have easily been approached within a few hours of the alleged incident. The intervening period of more than twenty hours is sufficient for consultations among interested parties, coordination with witnesses to ensure their accounts are aligned, and careful formulation of allegations against

multiple accused persons numbering twenty-two in total. The delay, coupled with the fact that the complainant has now stated that the applicant was not present at the spot, strongly suggests that the allegations against the applicant may have been added to the FIR either during the process of consultation or due to mistaken identity.

9. This Court is also seized with the fact that the entire dispute underlying this criminal case has its roots in a property dispute between the complainant's party and Mst. Azeema and others. The FIR itself admits the existence of "old murderous enmity" and property dispute. The counter FIR No.118/2014 lodged by Mst. Azeema against the complainant party establishes that this is a case of mutual hostility between two groups arising from a dispute over land. In such cases, it is a well-established principle in jurisprudence that allegations must be scrutinized with particular care, as motivated prosecutions are common when civil disputes transform into criminal allegations. The applicant, standing outside this property dispute, has been unnecessarily implicated, and this circumstance supports the inference of malafide or at least negligence on the part of the investigating authorities.

10. The FIR, upon its face, contains only general allegations of firing and kidnapping against multiple accused without attributing any specific, individualized, or distinguishable role to any particular accused, including the applicant. The applicant is described merely as one of twelve armed persons standing at the spot with deadly weapons. However, there is no mention in the FIR of what specific act the applicant performed, what role he played in the alleged abduction, whether he fired his weapon, and if so, what injuries did he cause. There is no specification that the applicant was one of the persons who made direct firing upon the deceased. The FIR simply lists him as being present, without more. This vagueness and lack of specificity is particularly troubling given the grave nature of the allegations. If the applicant had fired upon the deceased, one would expect the FIR to specifically allege this. If he had played

a particular role in the abduction, one would expect the FIR to detail that role. The absence of such specificity suggests either that the FIR was hastily drafted without proper attribution of roles or that the applicant's involvement is uncertain even in the mind of the complainant.

11. Furthermore, it must be noted that the witnesses cited in the FIR are exclusively blood relatives of the complainant. The complainant was accompanied by her deceased son Gulshan, her daughter Mst. Shamshad, and another female relative Mst. Naseeba. These are the only eyewitnesses to the alleged abduction and the events at the link road. No other independent witness has been cited. The place of occurrence, being on a link road between two major towns and being at midday (approximately 1200 hours), would reasonably have seen other travelers, motorcyclists, or passersby. The complete absence of independent witnesses to the abduction is notable and suggests that the narrative may be either exaggerated or partially fabricated. A truly independent witness would carry far greater weight than the interested testimony of family members.

12. When this Court examines the tentative assessment in the present case, the balance tilts decisively in favor of the applicant. The investigating officer, after conducting investigation, has found no credible evidence against the applicant. The applicant has an alibi corroborated by independent witnesses. The complainant herself has stated that the applicant was not present at the spot. The FIR contains only general allegations without specific attribution of role. There is an unjustifiable delay in lodging the FIR. The case is rooted in a property dispute, providing motive for false allegations against outsiders to the dispute. The witnesses are all related to the complainant. Under these circumstances, the element of malafide arrest is clearly apprehended, and the applicant has established a compelling case for the grant of pre-arrest bail.

13. While it is true that the offences alleged are grave and fall within the prohibitory clause of Section 497 Cr.P.C, the principle is well-established that the gravity of the offence alone is insufficient to warrant refusal of bail. The

evidence must be such as to create reasonable grounds for believing that the accused committed the offence. In the present case, the evidence against the applicant is weak, circumstantial, and contradicted by the investigating officer's own findings and the complainant's own statements. The modus operandi of the alleged crime, a planned ambush with multiple armed persons, is indeed grave and suggests a premeditated act. However, the applicant's specific involvement in this *modus operandi* is not established. He cannot be held responsible for the acts of co-accused merely by virtue of his alleged presence at the spot, unless the presence is coupled with knowledge of the common object and intention to further it. The FIR does not establish such knowledge or intention on the part of the applicant.

14. This Court recognizes the concern raised by the learned Deputy Prosecutor General regarding the gravity of the offence and the multiple injuries sustained by the deceased. The postmortem report showing six firearm injuries, including entry and exit wounds, certainly indicates a serious and organized crime. However, the applicant's connection to this organized crime remains unproven. The investigating officer, after examining the evidence, has found no such connection. The independent witnesses have placed the applicant elsewhere at the time of the incident. The complainant herself has stated that the applicant was not present at the spot. The Court cannot, at the tentative assessment stage, override these findings and assume the applicant's guilt merely because the underlying crime is grave.

15. The principles of natural justice and the presumption of innocence require that at the bail stage, particularly pre-arrest bail, the balance must be struck in favor of the accused if the evidence is weak and if malafide arrest is apprehended. The applicant has clearly established that he has been falsely implicated in a case rooted in property disputes in which he has no involvement, that the investigating officer has found no credible evidence against him, and that his presence is corroborated by independent witnesses.

16. For the foregoing reasons, this Court is of the considered opinion that the applicant has made out a compelling case for the grant of pre-arrest bail. The investigating officer's findings, the alibi corroborated by independent witnesses, the complainant's own statement that the applicant was not present at the spot, the absence of specific role attribution in the FIR, the unjustifiable delay in lodging the FIR, and the context of property dispute all weigh in favor of the applicant. The Court is satisfied that the apprehension of malafide arrest is justified and that the applicant is entitled to the extraordinary relief of pre-arrest bail. Accordingly, this Court allow pre-arrest bail to the applicant Shahzado @ Zado S/O Mumtaz Hussain and confirmed the interim order dated 09.07.2025 under same terms and conditions. Accused to cooperate the investigation further and join trial.

J U D G E