

IN THE HIGH COURT OF SINDH, AT KARACHI

Cr. Bail Appln. No. 1226 of 2025.

Cr. Bail Appln. No. 1154 of 2025.

Applicants : Habib-ur-Rehman, Taha Hussain, Khayal Muhammad, Rehman Ullah, Faisal Khan and Khaista Gul alias Meer Ahmed Khan through Mr.Syed Nadeem-ul-Haq, Advocate a/w applicants.

Complainant : Saleh Khan through Mr. Syed Mukhtiar Hussain Shirazi, Advocate for complainant.

Respondent : The State, through Mr. Muhammad Noonari, D.P.G

Date of Hearing : 05.11.2025.

Date of Order : 05.11.2025.

O R D E R

TASNEEM SULTANA, J: By this common order, I intend to dispose of the above-listed both Criminal Bail Applications, as the same arise out of the same Crime/FIR No. 205 of 2025, registered under Sections 147, 148, 149, 342, 337-A(i), 506-B, PPC at Police Station Korangi, Karachi, East; hence, both matters have been heard together.

2. Having been rejected their earlier applications for grant of bail before arrest by the learned IV-Additional Sessions Judge, Karachi-East, vide order dated 05.05.2025, applicants Habib-ur-Rehman, Taha Hussain, Khayal Muhammad, Rehman Ullah and Faisal Khan, through Criminal Bail Application No. 1226 of 2025, and applicant Khaista Gull alias Meer Ahmed Khan, through Criminal Bail Application No. 1154 of 2025, seek the same concession from this Court.

3 Brief facts of the case as gathered from the FIR are that on 15.04.2025 at about 03:00 p.m., the complainant Saleh Khan went to the house of accused Habib-ur-Rehman situated at Street No.21-B, Block 32-A, Zia Colony, Korangi No.1, Karachi, where Habib-ur-Rehman along with his three brothers namely Rehman Ullah, Faisal Khan and Taha Hussain, their father Khayal Muhammad, and two other persons namely Talha son of not known and the applicant Khaista Gul @ Meer Ahmed Khan allegedly assaulted him with the butt of a pistol and an iron rod, causing him

injuries and allegedly snatched his mobile phone, watch and gold ring. Motive disclosed is that the complainant's daughter had earlier been married to accused Habib-ur-Rehman and after domestic discord he divorced her, upon which the accused persons started demanding money and extending threats.

4. Learned counsel for the applicants contends that the applicants are innocent and have been falsely implicated due to the admitted family dispute between the parties; that the matter is of a purely domestic origin which has already resulted into proceedings before the Family Court, Hyderabad; that the FIR contains general and omnibus allegations without specifying individual roles of the applicants except for naming them together; no recovery has been effected; and that mala fide is apparent from the circumstances.

5. Conversely, learned APG for state assisted by the learned counsel for the complainant opposed the confirmation of bail and contended that the applicants are specifically named with attributed roles; that the complainant's version is consistent; that pre-arrest bail is an extraordinary relief; and that no mala fide is established from the material available on record.

6. Heard. Record perused.

7. It is a trite of law that the Court, at the bail stage, is not required to undertake a deeper appreciation of the evidence. The Court is confined to a tentative assessment to determine whether the circumstances justify exercise of the extraordinary jurisdiction of pre-arrest bail. Such relief may be extended where mala fide, ulterior motive, likelihood of humiliation or misuse of process of law is prima facie visible from the surrounding circumstances.

8. On a perusal of the FIR, it appears that the complainant alleged that when he went to the house of applicant Habib-ur-Rehman, where the applicant along with other nominated accused persons, assaulted him with the butt of a pistol and an iron rod and also took away his mobile phone, wristwatch and gold ring. It appears that the parties were already entangled in a prior matrimonial dispute arising out of the divorce of the complainant's daughter, indicating pre-existing hostility. It is also noted that although the alleged occurrence took place on 15.04.2025, the FIR came to be lodged on 17.04.2025, showing a delay of more than two days which, at the bail stage, is a relevant circumstance requiring cautious judicial consideration.

9. The complainant's own visit to the house of the applicants prior to the alleged occurrence, the admitted background of family discord, absence of any independent witness from the residential locality, coupled with the delay in lodging the FIR, raise a material legal question: whether the precise role, participation, number of assailants and the manner of occurrence, as narrated in the FIR, can be conclusively determined without evidence being recorded before the Trial Court.

10. Such determination lies exclusively within the province of the Trial Court and cannot be conclusively made at the bail stage without undertaking a deeper appreciation of the material, which the law forbids at this juncture. These circumstances collectively bring the case of the applicants within the ambit of further inquiry in terms of Section 497(2), Cr.P.C. When the case calls for further inquiry into guilt of accused within the meaning of Section 497(2) Cr.P.C., the accused is entitled to bail as of right. Reliance is placed on the case of **Salman Mushtaq & others v. The State through P.G Punjab and another (2024 SCMR 14)**.

6. While considering the grounds agitated for enlargement on bail, whether pre-arrest or post-arrest, the atrociousness, viciousness and/or gravity of the offence are not, by themselves, sufficient for the rejection of bail where the nature of the evidence produced in support of the indictment creates some doubt as to the veracity of the prosecution case. Therefore, where, on a tentative assessment, there is no reasonable ground to believe that the accused has committed the offence, and the prosecution case appears to require further inquiry, then in such circumstances the benefit of bail may not be withheld as a punishment to the accused.

11. The offences alleged do not fall within the prohibitory clause of Section 497 Cr.P.C. The principle laid down by the Hon'ble Supreme Court of Pakistan in case reported as **Tariq Bashir and 5 others v. The State (PLD 1995 SC 34)** is that in offences not falling within the prohibitory clause, grant of bail is a rule and refusal an exception, particularly when no exceptional circumstances are pointed out by the prosecution.

12. In view of the above facts and circumstances, interim pre-arrest bail granted to applicants namely Habib-ur-Rehman, Taha Hussain, Khayal Muhammad, Rehman Ullah and Faisal Khan vide order dated 13.05.2025, and to applicant Khaista Gull alias Meer Ahmed Khan vide order dated 09.05.2025, respectively, was confirmed on the same terms and conditions by a short order dated 05-11-2025, and these are the reasons for the same.

13. The observations made herein are purely tentative in nature, and shall not prejudice the case of either party.

JUDGE

Shabir/P.S