IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Bail Application No. S- 431 of 2025.
(Ismail Mugheri Vs. The State)

Applicant:	Ismail son of Qadir Bux by caste Mugheri, *through* Mr. Sanaullah Bhutto, Advocate.
The State:	*Through,* Mr. Nazeer Ahmed Bhangwar, Deputy Prosecutor General.
Complainant:	Muhammad Ayoob son of Mataro Mugheri, *through* Mr.Habibullah G. Ghouri, Advocate.
Date of hearing:	06.11.2025.
Date of Order:	06.11.2025.

O R D E R

Ali Haider 'Ada', J:-, Through this post-arrest bail application, the applicant seeks his release in case bearing FIR No. 05 of 2024, registered at Police Station Garello, District Larkana, for offences punishable under Sections 302, 324, 114, 148, and 149, Pakistan Penal Code. Prior to approaching this Court, the applicant had moved a similar plea for post-arrest bail before the learned Additional Sessions Judge-IV, Larkana, which was declined vide order dated 22.07.2025. Hence, the present application has been filed before this Court.

2. Brief facts of the prosecution case are that the applicant Ismail with empty-handed handed allegedly instigated the co-accused persons, and upon such instigation, the co-accused fired shots which hit the deceased, namely Dhani Bux, who later succumbed to the injuries. The incident is stated to have occurred on 26.03.2024 at about 06:00 p.m., whereas the FIR was lodged on the following day, i.e., 27.03.2024 at about 02:00 p.m.

3. Learned counsel for the applicant contends that, as per a bare reading of the FIR, no active role has been assigned to the applicant except that of alleged instigation, which is yet to be determined during trial after recording of evidence. It is further argued that previous enmity between the parties stands admitted, and due to such animosity, the name of the applicant has been falsely introduced in the case. Learned counsel submits that the applicant has been behind bars since 23.06.2025, the investigation has been completed, and the applicant is no longer required for further investigation. He, therefore, prays for the grant of post-arrest bail.

4. Conversely, learned counsel for the complainant opposes the bail plea by contending that it was on the instigation of the applicant that the co-accused committed the act of murder, which falls under Section 302 PPC, a heinous and non-bailable offence; therefore, the applicant does not deserve the concession of bail.

5. Learned Deputy Prosecutor General also adopts the arguments advanced by the complainant's counsel and adds that the applicant was actively present at the place of occurrence, and his conduct provoked the co-accused to commit the offence. He, therefore, prays for dismissal of the bail application.

6. Heard the arguments of learned counsel for the parties and perused the material available on record with due care.

7. Record reflects that the FIR was lodged on 27.03.2024 at about 02:00 p.m., whereas the incident allegedly took place on 26.03.2024 at about 06:00 p.m., showing a delay of nearly twenty hours in setting the law into motion. Even according to the FIR, the complainant had informed the police about the incident through a cell phone call; however, no explanation or interconnecting circumstance has been furnished as to why the FIR was not lodged promptly. Such an unexplained delay, per se, constitutes one of the valid grounds for the grant of bail in the absence of any plausible or cogent reason. Reliance is placed upon the case of ***Mazhar Ali versus The State*** **(2025 SCMR 318).**

8. Furthermore, no doubt, the offence under Section 302 PPC is heinous in nature; however, mere heinousness of the offence, by itself, is not a valid ground to refuse bail when the case otherwise calls for further inquiry. The Honourable Supreme Court in the case of ***Husnain Mustafa versus The State*** **(2019 SCMR 1914)** has observed that the gravity of the offence alone cannot be made the basis for denial of bail if the evidence makes the case one of further inquiry.

9. As per the prosecution's own case, the applicant was empty-handed at the time of the incident, and his alleged role is limited to that of instigating the co-accused. Such an allegation, by its nature, requires a deeper appreciation of evidence to determine whether a person, who was not armed with any weapon, actually shared the common intention or object to commit murder.

Moreover, mere instigation, without any specific act towards the commission of murder of a particular deceased, cannot conclusively establish the requisite *mens rea* at this stage. Therefore, the role attributed to the applicant squarely brings his case within the ambit of "further inquiry" as envisaged under Section 497(2), Cr.P.C. Support in this regard is drawn from the case of ***Mst. Asiya versus The State and another*** **(2023 SCMR 383).**

10. The investigation of the case has been completed, and the applicant is presently confined in judicial custody; hence, his further detention is not required for investigative purposes. In these circumstances, when the case otherwise falls within the ambit of the grant of bail, the fundamental principle of criminal jurisprudence that ***bail, not jail,*** is the rule becomes applicable. This principle is fortified by the maxims ***"bail est jus, non gratia"*** **and** ***"semper praesumitur pro libertate",*** signifying that bail is a legal right, not a favour, and that a presumption always lies in favour of liberty unless exceptional grounds exist to deny it. It is a well-settled principle of law that once the Court concludes that the matter falls within the ambit of "further inquiry" as contemplated under Section 497(2), Cr.P.C, the accused becomes entitled to the concession of bail even in cases falling within the prohibitory clause. Reliance is also placed upon the case of ***Saeed Ahmed and another versus The State*** **(PLD 2024 Supreme Court 1241),** wherein it was held that:

> *Admittedly, the petitioners facing trial are no more required for any further investigation or probe. The guilt or innocence of the petitioners is yet to be determined at the trial after recording evidence. According to settled principles of law bail cannot be withheld as mere punishment.*

11. Keeping in view the above discussion and upon careful consideration of the facts and circumstances of the case, the applicant is admitted to post-arrest bail. Consequently, this bail application is allowed, subject to his furnishing a solvent surety in the sum of Rs.100,000/- (Rupees one hundred thousand only) and a personal bond in the like amount to the satisfaction of the learned trial Court. Needless to mention, the observations made herein are tentative in nature and shall not prejudice the case of either party at the time of trial.

JUDGE