

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. S-99 of 2026

Applicant : Mushtaque S/o Umeed Ali, by caste Lund
Through Mr. Bashir Ahmed Malano, Advocate

Complainant : Mst. Jeejan W/o Ali Anwar, by caste Bozdar,
in person

The State : *Through* Mr. Mansoor Ahmed Shaikh, DPG

Date of hearing : 05.03.2026
Date of Short order : 05.03.2026
Reasons recorded on : 06.03.2026

ORDER

KHALID HUSSAIN SHAHANI, J.— Applicant Mushtaque, seeks the concession of post-arrest bail in a case bearing Crime No.104 of 2022, registered at Police Station Khanpur Mahar, District Ghotki, for offences ostensibly falling under Sections 324, 337-H(ii), 147, 148 and 149, Pakistan Penal Code, 1860, his earlier application having been declined by the learned Sessions Judge, Ghotki, vide order dated 27.01.2026.

2. As per the FIR lodged on 09.11.2022 at 1600 hours, it is alleged that owing to admitted prior enmity, stemming from Crime No.76 of 2022 under Section 302 PPC, wherein relatives of the applicant are alleged to have murdered the complainant's nephew, the parties nursed mutual hostility. On 18.10.2022 at about 1200 hours, when the complainant Mst. Jeejan, accompanied by her sisters Mst. Azizan and Mst. Basheeran, was reportedly grazing goats near the land of Baari Khan Pitafi, the applicant and his co-accused, variously armed with K.Ks, guns and rifle, allegedly attempted to dispossess them of the livestock at gunpoint; upon resistance, the applicant is said to have fired with his K.K. with the avowed intention to commit *Qatl*, causing an injury on the left side below the nipple of the complainant, while co-accused Imdad

allegedly fired a gunshot hitting her forehead, followed by aerial firing and retreat of the assailants on the arrival of co-villagers. The complainant then procured transport, approached the police station, obtained a police letter for medical treatment, was examined at Taluka Hospital Khanpur Mahar, and thereafter lodged FIR No.104 of 2022 under the aforementioned provisions.

3. Learned counsel for the applicant mainly contended that the applicant is innocent and has been roped in on account of deep-rooted and admitted enmity, which is evident ex facie from the FIR itself, wherein prior homicide litigation against his relatives stands acknowledged. He emphasized the inordinate and unexplained delay of about twenty-one days in setting the law in motion, arguing that such procrastination, in the circumstances of a named-accused and an admitted prior dispute, is inherently suggestive of deliberation, consultation and embroidery, thereby corroding the veracity of the prosecution version. It was further argued that the complainant has dragged the entire family of the applicant into the net of criminal litigation out of malice and ulterior motives; that co-accused have already been admitted to pre-arrest bail by the learned I/C Sessions Judge, Ghotki, vide order dated 23.01.2026, thus attracting, mutatis mutandis, the rule of consistency; that no incriminating article has been recovered from the applicant during investigation; that all cited eye-witnesses are closely related to the complainant, hence their evidence would require cautious scrutiny at trial; that the bulk of the offences are per se bailable and even the applicability of Section 324 PPC, is to be judicially determined upon recording of evidence; and that, cumulatively, the matter squarely falls within the ambit of “further inquiry” contemplated by Section 497(2) Cr.P.C, entitling the applicant to bail,

reliance being placed on various precedents of the superior courts wherein the doctrine of further inquiry has been elaborated as a notional and exploratory assessment which, if it engenders doubt, mandates grant of bail. Reliance was placed on case of (2016 P.Cr.L.J Note 59), (2023 SCMR 999), (2023 SCMR 1243), (2022 SCMR 1245) and (2022 MLD 558).

4. Conversely, learned DPG for the State, duly assisted by the complainant in person, vehemently opposed the bail on the premise that a specific, individual role stands assigned to the applicant of having caused a firearm injury on a vital part of the complainant's body with the *mens rea* to commit Qatl-i-amd, thereby attracting the prohibitory clause of Section 497, Cr.P.C. He submitted that the applicant's role is qualitatively distinguishable from that of the co-accused who are on bail, hence the principle of consistency is inapplicable; that the petitioner remained a proclaimed absconder for a considerable duration without any plausible explanation, a circumstance also noticed by the learned Sessions Judge; and that sufficient material, at this stage, *prima facie* connects the petitioner with the commission of the alleged offence, warranting refusal of the concession of bail. At the same time, learned DPG, while maintaining his objection, fairly conceded that the nature and classification of the injuries as reflected in the medical record, both being described as bruise and abrasion would ultimately require evidence.

5. The record reveals that the alleged occurrence took place on 18.10.2022 at 1200 hours, whereas the FIR came to be lodged on 09.11.2022, thus reflecting a delay of about twenty-one days in reporting a serious, firearm-centric occurrence involving named adversaries. In the presence of admitted pre-existing enmity, coupled with this unexplained

delay, the possibility of deliberation, afterthought and false implication of the applicant cannot, at this tentative stage, be judicially excluded; particularly when, as pointed out, cases bearing Crime No.18 of 2022 and Crime No.11 of 2023 under Sections 324 and 337-F(i), PPC, were previously registered at Police Station Yaro Lund by Peer Dino, cousin of the applicant, against the complainant's brother and others, thereby evidencing a chequered history of cross-litigation between the parties.

6. Moreover, the final medical certificate, as brought to the Court's attention, records the time of arrival of the injured at 10:30 p.m on 18.10.2022, despite the occurrence having purportedly taken place at 1200 hours, thus exhibiting a substantial hiatus even in approaching the medical facility, which also remains unexplained on the present record. The nature of the injuries is documented as (i) a bruise with blackening of skin measuring 4 x 4 cm over the left epigastrium region, and (ii) an abrasion on the right side of the skull; the referral letter relied upon by the defense, while mentioning such injuries, does not unequivocally ascribe them to firearm impact. On a tentative appraisal, these injuries appear to fall within the rubric of *Jurh Ghayr Jaifah Damiyah* and *Shajjah-i-Khafifah*, which, if ultimately established as such, are punishable as bailable offences, thus rendering the precise legal characterization and *mens rea* a matter to be conclusively adjudicated at trial.

7. It is further of some significance that the initial roznamcha entry No.11, recorded on 18.10.2022 at 1350 hours, as pointed out by learned counsel for the applicant, does not name any accused, including the applicant; rather, it merely reflects a request by the complainant for medical assistance and issuance of a referral letter. The subsequent nomination of the applicant and others, after an inordinate lapse of 21

days, when viewed in conjunction with admitted enmity, the earlier cross-cases, the non-mentioning of names in the earliest version, and the debatable nature of injuries, cumulatively reduces the prosecution case to one of a doubtful and arguable character, thereby attracting the doctrine of further inquiry as envisioned by Section 497(2), Cr.P.C., as consistently interpreted by the superior courts.

8. As regards the objection premised on the petitioner's absconding, it is by now well-settled that abscondence, though a relevant circumstance, is not per se conclusive to deny bail where the remaining attending features of the case, on a tentative assessment, tilt in favor of granting such relief under the statutory command of Section 497(2), Cr.P.C. In the present matter, the totality of circumstances, unexplained delay in FIR, prior enmity, earlier cross-cases, omission of the applicant's name in the earliest report, and the doubtful classification of injuries, creates a landscape which, at least at this interlocutory stage, does not furnish "reasonable grounds" for believing, within the contemplation of Section 497(1), Cr.P.C., that the applicant has committed a non-bailable offence, but does provide sufficient grounds for further inquiry into his guilt.

9. Furthermore, the co-accused Umeed, Imdad and Abdul Razak, albeit attributed different roles, already stand admitted to pre-arrest bail by the learned I/C Sessions Judge, Ghotki, vide order dated 23.01.2026, and in the absence of any overwhelmingly distinguishing feature to the detriment of the petitioner, the rule of consistency, as expounded by the superior courts, also persuades in favor of extending to him the same concession, particularly where the case independently qualifies as one of further inquiry.

10. For the foregoing reasons, and bearing in mind that at the bail stage only a tentative, notional and exploratory assessment of the material is to be undertaken, this court is of firm view that the case of the applicant squarely falls within the ambit of Section 497(2) Cr.P.C, thereby entitling him to the concession of bail, notwithstanding the rigor of the prohibitory clause ostensibly attracted by Section 324 PPC. Accordingly, for reasons to be recorded later, the bail application was allowed vide short order dated 05.03.2026, and the applicant Mushtaque, was admitted to post-arrest bail subject to his furnishing a solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand only) and a personal recognizance bond in the like amount, to the satisfaction of the learned trial Court. These shall constitute the detailed reasons for the said short order.

11. It is clarified, *ex abundanti cautela*, that all observations made herein are purely tentative, confined to the bail stage, and shall neither prejudice the case of either party nor fetter the discretion of the learned Trial Court, which shall adjudicate the matter strictly on the basis of evidence adduced before it and in accordance with law.

J U D G E