

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

- (1) CrI. Bail Appl No. S- 47 of 2025
- (2) 1st Cr. Bail Appl No. S- 72 of 2025
- (3) 1st Cr. Bail Appl No. S- 125 of 2025

Najeebullah Chachar	V E R S U S	The State
Mushtaque Ahmed Chacher and ors	V E R S U S	The State
Saeed Ahmed Chachar	V E R S U S	The State

SINDH HIGH COURT

Composition of Bench Before **Mr. Justice Muhammad Saleem Jessar** Single/D.B.

Dates of Hearing: 26.05.2025

Decided on : 26.05.2025

(a) Judgment approved for
Reporting

~~YES~~
NO

C E R T I F I C A T E

Certified that the judgment / Order is based upon or enunciates a principle of law / decides a question of law which is of first impression / distinguishes/ over-rules/ reverses/ explains a previous decision.

Strike out whichever is not applicable.

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- NOTE** - (i) This slip is only to be used when some action is to be taken.
- (ii) If the slip is used. The Reader must attach it to be the top of the first page of the judgment.
 - (iii) Reader must ask the Judge writing the Judgment whether the Judgment is Approved for reporting.
 - (iv) Those directions which are not to be used should be deleted

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

- (1) Cr. Bail Appln. No.S-47 of 2025
(2) 1st Cr. Bail Appln. No.S-72 of 2025
(3) 1st Cr. Bail Appln. No.S-125 of 2025

Applicant : Najeebullah Chachar (on bail).
(Cr B.A. No.47/2025)

Applicants : Mushtaque Ahmed Chachar & 02 others (on bail).
(Cr B.A. No.72/2025)

Applicant : Zulfiqar Chachar,
(Cr B.A. No.125/2025)

Complainant : Saeed Ahmed Chachar present in person.

Respondent : The State.

M/s Muhammad Ali Memon and Raham Ali Abro, advocates for the applicants in all three matters.

Mr. Ali Anwar Kandhro, Addl. Prosecutor General, Sindh.

Date of hearing : 26.05.2025.
Date of Decision : 26.05.2025.

ORDER.

Muhammad Saleem Jessar, J.- By way of this common order, I propose to dispose of captioned three bail applications, as the same arise of out one and same crime and common questions of law and facts are involved.

2. The applicants preferred respective bail pleas before the Court below; however, their requests were turned down by way of orders dated 26.12.2024 and 20.02.2025, respectively; hence, these applications have been maintained. As reported, the case has been challaned, which is now pending for trial before the Court Sessions Judge, Shikarpur.

3. Per prosecution case, on 08.12.2024, at about 2.00 a.m. (midnight) accused Mushtaque armed with KK, Badhial with gun, Zulfiqar, Ajeeb, Najeeb, having lathies and two unidentified accused persons, attacked upon the complainant at the

cattle pond situated in Village Abdul Ghafoor Chachar, wherein accused Zulfiqar inflicted lathi blows to the complainant on his arm and the complainant found his gold chain of one tola as well as touch mobile phone were missing. Then, on 18.12.2024 the complainant lodged FIR of the incident with PS Chak, District Shikarpur.

4. Learned Counsel for the applicants submits that the FIR is delayed for about 10 days, though the distance between the police station and the place of incident is only 2/3 kilometers and the prosecution has not furnished any explanation for such an inordinate delay. He next submits that the alleged incident occurred at the odd hours of the night i.e. at 2.00 a.m. and the parties being relatives as well as well-known to each other, the complainant had not named any of the accused in the entry No.9 got recorded by him in the daily diary of the police station on the following day. He next submits that prior to this incident, accused Najeebullah Chachar had got registered FIR No.28/2024 with Police Station Bachal Bhayo on 18.12.2024 against accused Deedar and others, who are cousins as well as brothers-in-law of the complainant of this case, therefore, in order to exert pressure upon the applicants the complainant has cooked up instant case by implicating therein all the close relatives *inter se*; hence malafide on the part of complainant as well as prosecution stands established and the applicants are entitled for extraordinary relief in shape of pre-arrest bail. Learned Counsel further submits that the injury allegedly sustained by injured complainant Saeed Ahmed attributed to applicant Zulfiqar (vide Cr. B.A. No.S-125/2025) is on the wrist of left arm of the complainant, which has been declared by the MLO to be falling u/s 337-F(v), PPC carrying punishment of 05 years; hence the case against the applicants requires further enquiry.

5. Learned Addl. P.G. appearing for the State, after going through the police file and referring to the entry got entered by the complainant at the police station, submits that though the parties are relatives *inter se*, even then the applicants were not named in the entry; besides, the injury allegedly sustained by the complainant on the wrist is on non-vital part of body and carries 05 years' punishment, therefore he has no objection for grant of all these application.

6. Pursuant to process, injured/complainant Saeed Ahmed has appeared and submits that the applicants had entered into his house by night and thereby

committed theft of his golden chain etc. and on being restrained accused Zulfiqar caused lathi blow to him, therefore, all the applicants are not entitled for the concession of bail, as claimed. He, however, admits that the accused nominated in FIR No 28/2024 with PS Bachal Bhayo are his cousins as well as brothers-in-law.

7. Heard. Record perused.

8. Admittedly, the incident is said to have occurred on 08.12.2024, whereas FIR was lodged on 28.12.2024 i.e. with delay of 10 days and no plausible explanation has been furnished by the prosecution for such an inordinate delay. Delay in criminal cases has always been held by the superior Courts to be fatal for the prosecution. As far as merits of the case are concerned, except accused Zulfiqar, no role has been assigned to any of the applicants; however, the injury allegedly attributed to accused Zulfiqar is concerned, it is on non-vital part of his body and has been declared by the MLO falling u/s 337-F(v), PPC carrying punishment of 05 years only. As far as application of Section 459, PPC is concerned, the applicants as well as complainant/injured are close relatives *inter se*; hence, involvement of accused in the odd hours of the night in the house of complainant in view of their close relationship requires evidence and it is yet to be proved by the prosecution whether the applicants allegedly had entered into the house of complainant by night in order to commit theft and whilst committing the offence had caused injury to the injured complainant, is a question which is yet to be determined by the trial Court after recording evidence of the prosecution witnesses; hence, the mandatory requirement of Section 459, PPC for conjoint punishment is yet to be proved by the prosecution after recording its evidence. The case has been challaned and no complaint with regard to misuse of concession of interim pre-arrest bail extended to the applicants earlier has been brought on record.

9. In the circumstances and in view of above factual position with regard to the enmity between the parties, basic ingredients for grant of pre-arrest bail as has been laid down by the Apex Court in the case of *Rana Muhammad Arshad v. Muhammad Rafique and another (PLD 2009 SC 427)* are fully attracted in this case. Hence case against the applicants is covered by sub-section (2) to Section 497, Cr.P.C and requires further enquiry.

10. Consequently and in view of above, all three bail applications are hereby allowed. The interim pre-arrest bail granted to applicant Najeebullah Chachar (vide Cr. B.A. No.S-47/2025) and applicants Mushtaque Ahmed, Ajeeb and Badeehal @ Ali Hassan (vide Cr. B.A. No.S-72/2025), is hereby confirmed on same terms and conditions; whereas, applicant Zulfiqar Chachar is directed to be released on bail subject to furnishing his solvent surety in the sum of Rs.100,000/- (rupees one hundred thousand) and P.R. Bond in the like amount to the satisfaction of trial Court.

JUDGE

Qazi Tahir PA*