

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR  
Crl. Bail Application No. S-241 of 2025

Date	Order with signature of Judge
Applicants:	1. Khadim Hussain. 2. Amjad Ali both sons of Payaro Khan, by caste Almani, Resident of village Faiz Muhammad Almani, P.O Porty No.1, Taluka Kandiaro, District Naushahro Feroze. Through Mr. Kashif Hussain Shaikh Advocate.
The Complainant:	Ashruf Ali S/o Jan Muhammad, Through Mr. Riaz Ali Shaikh, Advocate.
The State	Through Mr. Mansoor Ahmed Shaikh, Deputy Prosecutor General.
Date of hearing.	17-04-2025.
Date of decision.	17-04-2025.
	<u>ORDER.</u> .....

Ali Haider ‘Ada’,J:- Through this application, the applicants/accused named above seek pre-arrest bail in Crime No. 27/2025, registered under Sections 452, 337-A(i), 337-F(vi), 504, 148, and 149 PPC at Police Station Tharu Shah. The said FIR was lodged by the complainant, Ashruf Ali son of Jan Muhammad Almani. Prior to filing the instant application, the applicants had approached the learned Sessions Judge, Naushahro Feroze, for the same relief; however, their application for pre-arrest bail was declined vide order dated 14-03-2025.

2. Brief facts of the prosecution case are that the complainant, Ashraf Ali Almani, lodged the FIR on 21-02-2025, wherein he stated that on 26-01-2025, he along with his brother Ahsan Almani went to the village of his nephew, Sarfraz, for a visit and were engaged in conversation. At about 8:00 p.m., accused Khadim, Amjad, Deedar, Imran, Riaz, Ayaz, Nawab, Gulzar, and Ghulam Muhammad, all armed with lathis, unlawfully trespassed and confronted them, saying, since you are not withdrawing from the land, so, you will not be spared. Thereafter, accused Khadim Hussain allegedly struck the complainant on the head with a lathi, while accused Amjad caused a lathi blow to the complainant’s left arm. The remaining accused are stated to have inflicted lathi blows on various parts of his body. After the incident, the

complainant approached the police and obtained a letter for medical treatment. He awaited the final medical certificate and upon receiving it, lodged the FIR.

3. Learned counsel for the applicants, subsequent to the filing of this application, submitted various statements along with relevant documents, these include the certified true copy of the FIR, copy of the challan, application under Sections 22-A & 22-B Cr.P.C. filed by one Abdul Ghani (a close relative of the complainant) along with the order passed thereon, report of the Complaint Cell, Case Diary showed that applicants joined the trail, application before the Medical Board, final Medical Certificate, and the Office Order regarding constitution of the Medical Board. All these documents are taken on record for consideration.

4. Learned counsel for the applicants submits that there is an inordinate delay of approximately 25 days in the registration of the FIR, without any plausible explanation. The only justification provided by the complainant is that he approached the police after obtaining the final medical certificate. However, the said certificate was issued on 06-02-2025, whereas the FIR was lodged on 21-02-2025, reflecting an unexplained delay of around 15 days even after issuance of the medical certificate. Furthermore, learned counsel submits that one Abdul Ghani, a close family member of the complainant, had earlier filed an application under Sections 22-A and 22-B Cr.P.C. before the learned Sessions Judge/Justice of Peace, Naushero Feroze, alleging the same incident in which the present complainant purportedly sustained injuries. However, the narrative presented in the said application significantly contradicts the version later presented in the FIR. The application under Sections 22-A & 22-B Cr.P.C. was filed on 28-01-2025, but was subsequently disposed of on the ground that the grievance of Abdul Ghani had been redressed through the registration of present FIR No. 27/2025. This contradiction in two versions. He further contends that the medical certificate relied upon by the prosecution has been challenged before the competent Medical Board, which has already fixed a date for the examination of the alleged injured. Moreover, he submits that an FIR has also been registered from the applicants' side, in which members of the complainant party, including the present complainant have been nominated as an accused for causing injuries to the applicants, as these facts clearly

indicate malafide and ulterior motives behind the registration of the present FIR and the applicants reasonably apprehend their arrest at the hands of the police and complainant party; hence, he prays for confirmation of pre-arrest bail. He placed reliance upon case of *Sultan and 6 others Vs. The State* 2018 YLR 204 and case of *Bhai Khan Vs. The State* and another 2020 YLR Note 23.

5. Learned counsel for the complainant as well as the learned Deputy Prosecutor General oppose the bail application on the ground that the applicants are specifically nominated in the FIR with active roles, including inflicting lathi blows upon the complainant, resulting in a fracture of his left arm. It is further contended that application was moved before SSP Naushahro Feroze against the present applicants, which reflects the consistent grievance of the complainant. They argue that no malafide or ulterior motive is apparent on record; therefore, the applicants are not entitled to the extraordinary relief of pre-arrest bail.

6. Heard arguments and perused the material available on record.

7. To begin with, it is well-established that the merits of the case may be examined or touched upon at the bail stage. In this regard, guidance is drawn from the cases rendered in *Ch. Saeed Ahmed Khalid v. The State* (2023 SCMR 1712), *Muhammad Imran v. The State* (2023 SCMR 1152), and *Javed Iqbal v. The State* (2022 SCMR 1424). So, keeping in view the guidance laid down in the *supra* precedents, the case in hand tentatively assessed on the basis of the available material for the purposes of deciding the present bail application.

8. As, prior to the registration of the FIR, a person named Abdul Ghani, who is a family member of the complainant, filed an application under Section 22-A and 22-B Cr.P.C before the learned Sessions Judge/Justice of Peace at Naushero Feroze. This application was filed on 28-01-2025, while the incident itself occurred on 26-01-2025. In his application, Abdul Ghani alleged that he, along with the complainant Ashruf Ali (the Complainant) and other family members were present at home when the accused, namely Khadim Hussain and Amjad (the present applicants), along with other co-accused, entered their house, as co-accused Liaquat and Asghar instigated the assault, upon which Raban and Liaquat made aerial firing to cause harassment and accused Amjad struck the complainant Ashruf Ali with the butt of a gun, inflicting an injury to his left arm and causing another blow to his head, while accused Khadim Hussain allegedly caused a danda blow to the forehead and face of one Mst Samina.

9. As, this particular aspect cannot be conveniently overlooked and the role attributed to the present applicant Amjad Hussain in the FIR is materially inconsistent with the role assigned to him in the earlier application under Sections 22-A & 22-B Cr.P.C. In that application, it was specifically alleged that the applicant caused butt blows of a gun to the arm and head of the complainant Ashruf Ali, while Mst. Samina was also shown as an injured party. Furthermore, the complainant's side, by implication, affirmed the contents of the said application, as the same was disposed of on the ground that the grievance had been redressed through the registration of the present FIR. It is pertinent to mention that the application under Section 22-A & 22-B Cr.P.C. was filed merely two days after the date of incident, i.e., on 28-01-2025, whereas the FIR was registered after a delay of 25 days. Therefore, the version presented in the application is much closer in time to the incident, lending it more immediacy. From this, contradictory and divergent versions appear to emerge from the complainant's side, raising serious doubts at this stage. Given such conflicting accounts and in view of the settled principle that no individual should be unnecessarily incarcerated if ultimately they are likely to be released on bail. As fortified by the case of *Muhammad Zubair Wasim v. The State & others* (2022 PCr.LJ 1382), wherein the learned Division Bench of the Lahore High Court was pleased to grant bail on account of contradictory statement.

10. Furthermore, the most crucial aspect of the case is the unexplained and considerable delay in the registration of the FIR. Although the complainant has attempted to justify this delay by stating that he was awaiting the issuance of the final medical certificate, the said certificate was admittedly issued on 06-02-2025. Despite this, the FIR was lodged after an additional delay of approximately 15 days, which raises a serious question mark over the prosecution's version. In such circumstances, the possibility of deliberation or afterthought in lodging the FIR cannot be ruled out at this stage. It is also understandable why the FIR was not lodged promptly. Reliance is placed on the case of *Mazhar Ali v. The State* (2025 SCMR 1424).

11. In addition it is also the matter of record that the injuries sustained by the complainant have been challenged and the final report of the medical board is still awaited. As per the current medical opinion, the head injury has been classified as *Shajjah Khaffifah*, which is a bailable offence, while injury

No.03 has been categorized under other hurts, which is also bailable. Regarding the arm injury, it is pertinent to note that it does not fall within the prohibitory clause of Section 497 Cr.P.C. Reliance is placed on the case of *Zafar Nawaz Vs. The State & Others 2023 SCMR 1977*. Moreover, it is still pending for final classification by the medical board. At this tentative stage, when the ocular account is contradicted by material inconsistencies and the final medical opinion is pending, it would be premature to conclude the gravity of injuries. Therefore, the benefit of doubt and such uncertainty must go in favour of the accused at this stage.

12. At the time of deciding bail application, it is imperative that the matter be examined within the broader Constitutional framework, keeping in view the fundamental rights enshrined in the Constitution, particularly those relating to liberty, dignity, due process, and the right to a fair trial. Malafide, being a state of mind, may not necessarily be proved through direct evidence; however, it can legitimately be inferred from the surrounding circumstances, such as the absence of incriminating material against the accused or the lack of any lawful or bonafide purpose behind the intended arrest. Reliance in this regard is placed upon the case, rendered by the Hon'ble Supreme Court in the case of *Shahzada Qaiser Arfat alias Qaiser v. The State and another (PLD 2021 SC 708)*.

13. In view of the foregoing discussion, the applicants/accused have succeeded in making out a case for confirmation of pre-arrest bail within the purview of sub-section (2) of Section 497, Cr.P.C. Accordingly, the instant bail application is hereby allowed and the interim pre-arrest bail granted vide order Dated 19-03-2025, to the applicants/accused is confirmed on the same terms and conditions.

14. Needless to mention, the observations made herein above are purely tentative in nature and shall not prejudice or influence the learned Trial Court in the final adjudication of the case on its merits."

**J U D G E**