

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Crl. Bail Application No. S-267 of 2025

Date	Order with signature of Judge
Applicant:	Amanullah son of Hussain Bux by caste Solangi, resident of village Haji Noor Muhammad Solangi, Taluka Sobhodero, District Khairpur. Through Mr. Atta Hussain Chandio Advocate.
The State:	Through Mr. Mansoor Ahmed Shaikh, Deputy Prosecutor General.
Complainant:	Sajid Ali S/o Manzoor Hussain, Solangi ,village Haji Noor Muhammad Solangi, Taluka Sobhodero, District Khairpur. Through Mr. Munwar Hussain Memon, Advocate
Date of hearing:	17-04-2025.
Date of decision:	17-04-2025.
	<u>ORDER.</u> -.-.-.-.-.

Ali Haider ‘Ada’ J:- Through the instant application, the applicant/accused seeks pre-arrest bail in Crime No. 11 of 2025, registered under Sections 324, 504, 114, 147, 148, and 149 PPC at Police Station Hingorja. The FIR was lodged by the complainant, Sajid Ali Solangi, on 04.02.2025 at about 1730 hours, averring the occurrence of the incident on the same day at 0700 hours. Prior to approaching this Court, the applicant moved an application for pre-arrest bail before the learned Sessions Judge, Khairpur, which was subsequently transferred to the learned Additional Sessions Judge, Gambat. However, the same was dismissed vide order dated 21.03.2025.

2. Briefly, the facts of the instant case are that the complainant, Sajid Ali Solangi, lodged FIR No. 11/2025 on 04.02.2025, wherein it was averred that on the same date, while the complainant along with his brothers, Muhammad Yousuf Solangi and Imtiaz Ali Solangi, was engaged in irrigating their agricultural land, the accused persons namely Amanullah (applicant) armed with a gun, Muhammad Rahib armed with a repeater, Muhammad Ramzan and Muhammad Ibrahim both armed with pistols and Sarfraz alias Saifal armed with lathis, arrived at the scene. It is stated that accused Amanullah, while abusing the complainant party, instigated his brother Muhammad Rahib to make a straight fire upon Muhammad Yousuf

Solangi with intent to commit his murder. On such instigation, accused Muhammad Rahib opened fire, causing firearm injuries to Muhammad Yousuf on both legs. Upon raising hue and cry, the accused persons fled from the scene. Thereafter, the injured was taken to the Police Station from where a letter for medical treatment and medico-legal certificate was obtained and subsequently, the complainant lodged the FIR.

3. Learned counsel for the applicant contends that the only allegation levelled against the applicant in the FIR is that he allegedly instigated co-accused Muhammad Rahib, who then fired upon Muhammad Yousuf. It is submitted that neither applicant himself did cause any injury nor is there any direct evidence connecting him to the act of firing. The learned counsel further submits that the applicant has been falsely implicated due to a longstanding dispute over agricultural land between the parties. He also points out that co-accused Muhammad Ibrahim and Sarfaraz alias Saifal, whose roles were similarly attributed as abettors in the FIR, have already been granted post-arrest bail by the learned trial Court. In support of this contention, a copy of the bail order has been placed on record under the cover of statement. It is argued that the involvement of the applicant, if any, is a matter to be determined after recording of evidence during the trial. Learned counsel also bring on notice that the entire family of the applicant has been roped in with malafide intention and ulterior motives. The applicant has already joined the investigation and challan has been submitted before the trial Court. Further contends that applicant has great apprehension of his arrest at the hands of police as acting under the influence of complainant. In support of his arguments, learned counsel has placed reliance on the case of *Moutbar Khan v. The State*, 2024 MLD 1313. He prays for confirmation of interim pre-arrest bail granted to the applicant.

4. On the other hand, learned counsel for the complainant has opposed the grant of bail and contends that the present applicant instigated co-accused Muhammad Rahib, who, acting upon such instigation, caused firearm injuries to Muhammad Yousif with the intent to commit his murder. He submits that the ocular account is fully corroborated by the medical evidence, which substantiates the prosecution's version. It is further argued that although there exists enmity between the parties, enmity is a double-edged weapon and in the present case, it was the very motive behind

the occurrence. He further highlighted that the FIR was lodged promptly, without any undue delay, which rules out the possibility of any malafide on the part of the complainant. In view of the above, learned counsel submits that the applicant does not deserve the extraordinary relief of pre-arrest bail, and therefore, the application merits dismissal.

5. Learned Deputy Prosecutor General for the State has also opposed the confirmation of interim pre-arrest bail. He submits that the ingredients of Section 114 PPC, abetment are clearly attracted in the present case, as the allegation against the applicant pertains to instigation, which forms a substantive part of the offence. He argues that the nature of the accusation does not entitle the applicant to the extraordinary relief of pre-arrest bail.

6. Heard learned counsel for the parties and perused the material available on record.

7. The gist of the allegation in the FIR against the applicant is limited to the accusation of instigation, whereby the actual offence was allegedly committed by the co-accused. It is also an admitted position that the parties are already entangled in prior enmity. In such circumstances, where there exists animosity between the parties, it becomes convenient to falsely implicate an individual by attributing the role of abetment or conspiracy, particularly when the alleged overt act is absent and the claim of instigation is based on mere verbal assertion. Furthermore, there is an unexplained delay of ten hours in the lodgment of FIR. Although the complainant admitted that he approached the police station to obtain a letter for medical treatment, no FIR was recorded at that time. While it is understandable that priority may be given to medical attention, but it is also a statutory obligation upon the police to document all relevant events, particularly, the initial entry made at the police station indeed reflects the visit of the complainant; however, it remains silent as to the gist of the allegations. It is a matter of concern, that when a complainant approached the police with an injured person, the police inquire about the cause and manner of injury, including the identity of the assailant, in order to proceed with appropriate action under the law. In absence of such critical information in the initial

entry, despite the police being informed, creates a possibility of an element of deliberation or afterthought in the registration of the FIR.

8. The alleged role attributed to the applicant is confined solely to instigation, which falls under the category of abetment. Such role, by its very nature, carries a relatively lesser degree of culpability, particularly when the applicant is not attributed with any overt act or direct participation in the commission of the offence. At the bail stage, the Court is not required to undertake a deeper appreciation of evidence, which is the exclusive domain of the trial, rather, the Court must restrict itself to a tentative assessment of the material available on record. The allegation of instigation, being dependent upon the subjective interpretation of verbal conduct, requires careful examination and determination at the trial stage. Thus, at this juncture, where the applicant is not alleged to have caused any specific injury, the case calls for further probe within the meaning of Section 497(2) Cr.P.C and the applicant cannot be deprived of the concession of bail.

9. So, on such view, support is drawn from the case of *Abdul Khalique v. The State* (2023 PCr.LJ Note 21), wherein the learned Division Bench of this Court was pleased to grant bail to the accused despite the allegation of instigation to other accused commit murder. Similarly, in another case titled *Pervaiz Ahmed v. Sardar Khan and others* (2022 PCr.LJ Note 15), the learned Division Bench has held that: “12. with regard to Respondent No.1/ accused Sardar Khan Chandio it has come on record that allegation against him is that of abetment / conspiracy but ingredients to establish such allegation would require proof (evidence), therefore mere allegation of connection would make out the case of the respondent Sardar Khan Chandio within meaning of further probe, hence no useful purpose would be served by committing him to custody for his ultimate release which he (accused) would claim matter of right...”

10. In view of the above discussion, the applicant has made out a case for confirmation of pre-arrest bail within the contemplation of sub-section (2) of Section 497 Cr.P.C. Accordingly, the interim pre-arrest bail already granted to the applicant/accused vide order dated 26-03-2025 is hereby confirmed on the same terms and conditions.

11. Needless to mention that the observations made herein above are tentative in nature and shall not prejudice or influence the learned Trial Court in any manner while deciding the case of the applicant on merits.

J U D G E

Nasim/P.A