

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No. S-64 of 2025

(Asghar Ali Gadani Vs The State)

Date	Order with signature of Judge
------	-------------------------------

- 1. For Orders on office objection.
- 2. For hearing of bail application.

ORDER.
10-04-2025.

Mr. Raj Kumar D.Rajput, Advocate for the applicant.
Syed Sardar Ali Shah Rizvi, Additional P.G for the State.

.....

Ali Haider 'Ada',J:- Through this bail application, the applicant seeks post-arrest bail in Crime No. 10 of 2018 registered at Police Station C-Section, Sukkur, lodged by Complainant Khalid Ali for offence punishable under Sections 302, 311, 337-H(ii), 148, and 149 of the Pakistan Penal Code. Earlier, the applicant was granted pre-arrest bail by this Court vide order dated 13-05-2019 in Criminal Bail Application No. S-540 of 2018. However, the applicant subsequently absconded during trial proceedings and was later arrested. He then moved a post-arrest bail application before the learned trial Court, which was dismissed. Hence, he has filed the present bail application before this Court.

Brief facts of the prosecution case are that on 26-02-2018 complainant Khalid Ali lodged afore-mentioned FIR alleging therein that he had dispute with accused Yousuf Gadani and others over the issue of “KARAP”, who used to issued threats to them of dire consequences. On 24-02-2018, he along with his maternal cousin Mst. Noureen, his sister-in-law Mst. Arosa and maternal aunti Mst. Simmi Khatoon were sleeping in a room on separate cots, while his father Sadiq Ali and mothers Mst. Khatoon were sleeping in another room, when on 25-02-2018 at about 05-00 am, they woke up on the noise, whent out of room and identified the accused on bulbs light as 1. Yousif, 2. Javed, 3. Ameer Ali alias Khan Chacha, 4. Gamthal, 5. Sikandar,. 6. Zaheer, 7 Mukhtiar. 8. Manzar alias Sooraj 9. Shoukat and 10. Asghar all duly armed with repeaters. Accused Manzar alias Sooraj instigated the other accused persons to kill them, on that accused Yousuf, Javed, Ameer Ali alias Khan Chacha and Sikandar

made straight fires on Sadiq Ali, which hit him, respectively, on his right shoulder, right side of neck, right side of back and on right shoulder, while accused Mukhtiar and Zaheer fired on Mst. Khatoon, which hit her chest, accused Gambthal and Shoukat made straight fires on Mst. Simmi Khatoon, which hit her at her right and accused Asghar Ali made fire at window of the room and thereafter, accused persons went away while making aerial firing. Sadiq Ali, Mst. Khatoon and Mst. Simmi Khatoon succumbed to injuries at the spot.

3. Learned counsel for the applicant submits that earlier the pre-arrest bail of the applicant was confirmed by this Court on merits. Thereafter, the applicant duly joined the trial proceedings. However, due to serious life threats and enmity stemming from a tribal dispute, particularly the murderous assault and killing of close relatives of the applicant by the rival party, the applicant, being the only son of his father, was left with no option but to remain absent in order to save his life. He draws the attention of this Court to pages 71 and 73 of the file, which contain FIRs registered regarding the murder of the close relative of applicant in the ongoing conflict between the Gadani tribe. It is further submitted that mere abscondence is not a valid ground to refuse bail when the accused is otherwise entitled to it on merits. In support of this contention, reliance is placed on the case of *Mittho Pitafi v. The State* (2009 SCMR 299), wherein it was held that if an accused is entitled to bail on merits, his abscondence alone would not justify to its denial. He concludes by submitting that the applicant is entitled to the concession of bail and prays for its grant in the interest of justice. During the course of arguments, learned counsel for the applicant placed on record one FIR and CFMS diary, which reflects that even the complainant has remained an absconder. These documents have been submitted under the cover of a statement.

4. It is pertinent to mention that this Court had issued notice to the complainant; however, he opted not to appear. Furthermore, as per CFMS diary, the complainant has been declared a proclaimed offender in FIR No. 211/2023.

5. Learned Additional Prosecutor General submits that the abscondence of the applicant is deliberate and intentional; hence, he is not entitled to the concession of bail. However, he further contends that since this Court had already rendered a verdict on merits at the time of granting pre-arrest bail, the observation of trial court while dismissing the post-arrest bail purely on merits was erroneous.

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

7. Record reveals that the applicant had earlier approached this Court for the grant of his pre-arrest bail along with other co-accused. This Court, while adjudicating the matter, rendered a clear verdict in Paragraph No. 09 of its order. For proper reference and clarity, the relevant paragraph is reproduced as under:-

9. Applicant Asghar Ali admittedly has not caused any injury to any of the deceased persons. The only allegation against him is of making ineffective firing at the window of the room/house, and no over act is attributed to him in the F.I.R. Hence, prime facie his case is one of further inquiry into his guilt as envisaged under sub-section (2) of Section 497 Cr.P.C entitling him to grant of bail."

8. Learned counsel for the applicant has placed on record certain FIRs registered under Section 302 PPC, highlighting the existence of serious enmity. It is also brought to the notice of this Court that the complainant himself has been declared an absconder due to the same aggressive circumstances. So, Far abscondence is concerned, the Honourable Supreme Court in the case of *Mazhar Ali v. The State (2025 SCMR 318)*, held that:- "*...It is true that the petitioner reportedly remained an absconder in this case for a period of ten years, but it is by now well settled that mere abscondence of an accused, by itself, is no ground to refuse bail to him if he is otherwise entitled to the relief on merits."*

9. The bail of the applicant has already been decided on merits by this Court; therefore, mere abscondence cannot be a valid ground to deprive him of his liberty, especially when the settled principle of law is that bail, not jail, is the rule. As liberty is a right beyond all price, it is aptly enshrined in the legal maxim *Libertas est inaestimabilis*, meaning Liberty is inestimable (priceless).

10. Keeping in view the above circumstances, the applicant is entitled to the concession of post-arrest bail in the aforementioned crime, subject to furnishing a solvent surety in the sum of Rs. 200,000/- and a P.R Bond in the like amount to the satisfaction of the learned trial Court.

11. In view of the above terms, the bail application stands disposed of accordingly.

J U D G E