

HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS
Crl. Bail Application No.S-76 of 2025

Applicants/ accused: 1. Arbab Ali s/o Shakir Ali.
 2. Jamaluddin alias Jamshed s/o Arbab Ali.
 3. Sher Muhammad s/o Arbab Ali.
 4. Niaz Muhammad s/o Arbab Ali.
 5. Faiz Muhammad s/o Sukiryo
 Through Mr. Wishandsa Kolhi and Ms. Nosheen Pahore
 advocates

The State: Through, Mr. Ghulam Abbas Dalwani, D.P.G.

Complainant: Ameer Bux s/o Majnoo Nohri
 Through Mir Pervaiz Akhter Talpur advocate

Date of hearing: 03.06.2025

Date of Order: 03.06.2025

ORDER.

Jan Ali Junejo, J. – The applicants/accused, namely Arbab Ali, Jamaluddin @ Jamshed, Sher Muhammad, Niaz Muhammad, and Faiz Muhammad, have filed the present bail application following the dismissal of their earlier pre-arrest bail plea (Bail Application No. 73/2025) by the learned Sessions Judge, Tharparkar at Mithi, through order dated 18.03.2025. The matter arises from FIR No. 07/2025 registered at Police Station Kheensar under Sections 337-F(iv), 506(ii), 147, 148, 149, 114, 337-A(i), 337-F(i), and 504 PPC, with additional charges later incorporated under Sections 337-F(v), 337-F(i), and 337-A(iv) PPC in the charge sheet. Ad-interim pre-arrest bail was granted to the applicants by this Court vide order dated 21-03-2025.

2. According to the contents of the FIR, the complainant Ameer Bux reported a dispute involving the boundary hedge of a Masjid with the accused, particularly Arbab Ali Nohri and others. On 01.02.2025, while the complainant was working on the hedge, the accused approached, confronted the complainant's party, and used abusive language. Allegedly, Faiz Muhammad incited the group, Jamaluddin @ Jamshed struck Sodho on the right eyebrow with a hatchet, and

Arbab Ali struck Jurio on the right arm with the blunt side of a hatchet. The other accused allegedly assaulted members of the complainant's party using sticks, fists, and kicks.

3. The learned counsel for the applicants argued that the applicants have been falsely implicated with malafide intentions in a dispute arising out of the placement of a hedge around a Masjid, which is essentially of a communal and property-related nature. He emphasized that the FIR was lodged with a delay of 14 days, casting doubt on the veracity of the allegations, and that the applicants are indigent individuals with no previous criminal record. He further contended that the offences alleged do not fall within the prohibitory clause of Section 497(1) Cr.P.C., and given the absence of any overt or specific role attributed to most of the applicants, the case clearly calls for further inquiry under Section 497(2) Cr.P.C. On these grounds, he urged the Court to extend the concession of bail to the applicants.

4. On the other hand, the learned counsel for the complainant, opposed the bail application by arguing that the applicants/accused are specifically nominated in the F.I.R and the injured Sodho and Jurio received injuries on vital parts of their body. He further contended that the prosecution witnesses have fully supported the version of the complainant, and that the delay of 14 days is fully explained in the contents of the F.I.R. He argued that the applicants/accused are not entitled to the extraordinary relief of bail before arrest.

5. The learned Deputy Prosecutor General, Sindh, supported the arguments of the learned counsel for the complainant. He contended that the applicants are specifically named in the FIR, directly implicating them in the commission of the offence. He further asserted that the victims sustained injuries on vital parts of their bodies, indicating the severity and deliberate nature of the attack. He also submitted that the statements of the prosecution witnesses consistently support

and corroborate the complainant's version of events. He prayed for the dismissal of the bail application.

6. I have meticulously considered the arguments advanced by the learned counsel for the applicants, the learned counsel for the complainant, and the learned Deputy Prosecutor General for the State. A tentative assessment of the material available on record has also been undertaken, as is permissible at the bail stage under the settled principles of law. Upon careful examination of the submissions and the available record, it becomes clear that the dispute mainly involves communal concerns and a property-related issue, particularly about marking the boundary of a Masjid with a hedge, an issue that is naturally sensitive, emotionally charged, and open to possible misuse or misunderstanding. A central argument raised by the learned counsel for the Applicants concerns the unexplained and considerable delay of 14 days in the lodging of the First Information Report (F.I.R), a delay which is not just procedural but one that carries significant implications for the integrity of the prosecution's narrative. Strikingly, during the course of arguments, neither the learned counsel for the Complainant nor the learned Deputy Prosecutor General could offer a satisfactory justification for this delay, leaving a critical gap in the prosecution's case and casting a serious shadow of doubt on its authenticity. This lack of prompt reporting is often interpreted by courts as suggestive of deliberation, fabrication, or malice. In analogous circumstances, this Court, in the case of ***Talib Hussain and Others v. The State (2023 P.Cr.L.J. Note 55)***, held as follows: *“As far contentions of learned Assistant Prosecutor General to the effect that delay in lodgment of FIR was explained and law relied upon by him has no relevancy with the facts and circumstances of present case, therefore, arguments advanced by learned Assistant P.G has no force. As far as learned counsel for complainant places reliance upon case of Khalil Ahmed Soomro (Supra) is concerned, it was not approved by the Honourable Supreme Court of Pakistan. As far as nature of injury as well as allegations*

of instant case, I am fortified with the view/dicta laid down by the Honourable Supreme Court of Pakistan in the case of Khalil Ahmed Soomro and others v. The State (PLD 2017 SC 730) and is of opinion that case against applicants require further inquiry. Moreover, parties are on strained relations to each other therefore, false implication of accused out of mala fide cannot be ruled out. In the circumstances reliance can be placed upon case of Muhammad Tanveer v. The State and another (PLD 2017 Supreme Court 733)". Additionally, the Complainant has chosen to implicate all four members of a single family, the father, who is advanced in age, and his three sons, two of whom are relatively young, in a manner that appears sweeping and indiscriminate. Such collective involvement without specific attribution of individual roles raises the specter of an ulterior motive, possibly to settle scores or exert pressure, thereby undermining the bona fides of the complaint. This concern is not without precedent. In the case of ***Ghulam Murtaza v. The State (2003 YLR 3255)***, the Lahore High Court held that the collective implication of family members, in the absence of specific and distinct allegations against each, calls for judicial caution and merits closer scrutiny. It was observed that: "*Prima facie the story of conspiracy seems to be an afterthought in order to widen the net by the complainant party to involve maximum persons from the accused party. The possibility of false implication of the petitioners being real brother and real uncle of the main accused, cannot be ruled out. I find that pre-arrest bail is meant to protect the innocent citizens, if have been found involved with mala fide intention. In these circumstances the case of the petitioners is that of further inquiry*". The principle enunciated in these precedents is squarely applicable to the facts of the present case, further strengthening the view that a deeper inquiry into the allegations against the applicants is required. There is nothing on record to suggest that the Applicants have any prior convictions or that they are habitual offenders, hardened criminals, or individuals with a history of desperate or dangerous conduct. Moreover, there is no indication that the alleged offence was committed in the name of, or under the

pretext of, so-called honour. In a similar case, *Ali Sher and another v. The State (2022 P.Cr.L.J. Note 33)*, this Court observed that: “By virtue of subsection (2) of section 337-N, P.P.C., in all cases of hurt under Chapter XVI, P.P.C., the additional punishment of tazir over and above arsh is awarded only in those cases where the offender is a previous convict, or a habitual, hardened, desperate or dangerous criminal, or where the offence has been committed by him in the name or on the pretext of the honour. Admittedly, accused persons were not previous convicts or habitual/hardened criminals. Such effect of subsection (2) of section 337-N, P.P.C. is also discussed in the case of *Haji Maa Din v. The State (1998 SCMR 1528)*.”

7. The lack of specific and overt acts attributed to most of the applicants, coupled with the communal nature of the dispute, the unexplained delay in lodging the FIR, and the collective implication of a family, collectively contribute to a situation where the guilt of the applicants cannot be determined with certainty at this preliminary stage. These factors bring the case squarely within the ambit of “further inquiry” as contemplated under Section 497(2) of the Criminal Procedure Code (Cr.P.C.).

8. For the foregoing reasons, the interim pre-arrest bail granted to the applicants is hereby confirmed on the same terms and conditions earlier imposed. It is clarified that all observations made herein are tentative in nature and shall not prejudice the trial Court or the case of any party during the proceedings.

JUDGE