

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Bail Application No. S-546 of 2026

Applicant : Zafar Hussain son of Muhammad Qasim
Nahiyoon Through Mr. Nasrullah Unar,
Advocate.

The State : Through Mr. Khalid Hussain Lakho, D.P.G.

Complainant : Through Mr. Saad Salman Ghani, Advocate.

Date of hearing: 22.06.2026
Date of order : 22.06.2026

ORDER

TASNEEM SULTANA, J.— Through the instant criminal bail application, applicant Zafar Hussain seeks post-arrest bail in Crime No.230 of 2024, registered at Police Station Tando Jam, under Sections 302 and 34 PPC. His earlier bail application was dismissed by the learned Model Criminal Trial Court-I/1st Additional Sessions Judge, Hyderabad, vide order dated 30.03.2026.

2. Brief facts of the prosecution case are that on 01.12.2024, the complainant appeared at Police Station and reported that on 28.11.2024, co-accused Jamal and Jalal had invited him and his party to perform at a marriage ceremony in Village Naseer Khan Pussio against payment of Rs.5,000/-. Accordingly, the complainant, along with his daughter Mehdi, Aja alias Raja, Mst. Anna and Aliza, reached there at about 11:00 p.m. During the programme, accused Jamal, Jalal, present applicant Zafar Hussain and two unknown persons allegedly started firing, whereupon the complainant party asked them to stop firing, otherwise the programme would be discontinued, but they insisted that the programme should continue. It is further alleged that on 29.11.2024 at about 2:30 a.m., the applicant fired from his repeater, which hit deceased Mehdi on her abdomen and right arm, while another fire hit Jalal Pussio. The injured Mehdi

was shifted to Civil Hospital, Hyderabad, where she succumbed to the injuries during treatment. After funeral rites, the complainant lodged the FIR.

3. Learned counsel for the applicant contends that the applicant is innocent and has been falsely implicated; that the occurrence, even according to the prosecution, took place during a marriage ceremony where aerial firing was allegedly made and there was no intention on the part of the applicant to cause death of anyone; that the Investigating Officer, after investigation, deleted Section 302 PPC and submitted challan under Section 322 PPC; that no repeater, empties or other incriminating article was recovered from the applicant or from the place of incident; that the FIR was lodged with delay of about two days without plausible explanation; that no postmortem was conducted; that co-accused Jamaluddin and Jalal have been acquitted of the charge in terms of compromise, while the complainant has also filed no-objection affidavit in favour of the applicant. He submits that the case calls for further inquiry and the applicant is entitled to concession of bail.

4. Conversely, learned D.P.G. Sindh opposes the bail application and submits that the applicant is nominated in the FIR with the role of firing from repeater, which hit the deceased on abdomen and right arm and resulted in her death; that the ocular account is supported by the statements recorded under Section 161, Cr.P.C.; that the opinion of the Investigating Officer regarding deletion of Section 302 PPC is not binding upon the Court; that the learned Magistrate has already disagreed with such deletion and taken cognizance under Sections 302/34 PPC; and that the compromise order in favour of co-accused does not extend any benefit to the applicant. He submits that reasonable grounds exist to connect the applicant with the alleged offence, hence he is not entitled to bail. Learned counsel for the complainant, however, submits that the complainant has filed no-objection affidavit in favour of the applicant.

5. Heard. Record perused.

6. In the present case, the applicant is nominated in the FIR with the allegation that during the marriage ceremony he fired from his repeater, which hit deceased Mehdi on her abdomen and right arm, whereafter she was shifted to hospital and died during treatment. The role assigned to the applicant is specific and cannot be treated as vague or omnibus at this stage.

7. The allegation against the applicant finds support from the statements recorded under Section 161, Cr.P.C., including the statement of Aliza, who was allegedly present at the place of incident and has also attributed firing to the applicant. At this tentative stage, such ocular material cannot be discarded merely because the occurrence took place during a marriage ceremony or because the defence describes the firing as aerial.

8. The contention that the Investigating Officer deleted Section 302 PPC and inserted Section 322 PPC is not sufficient to bring the case within the ambit of further inquiry. The opinion of the Investigating Officer is not binding upon the Court. The learned Judicial Magistrate, after applying judicial mind to the material placed before her, disagreed with such deletion and took cognizance under Sections 302/34 PPC. At this stage, therefore, the material collected during investigation is to be tentatively assessed independently and not merely on the basis of the opinion formed by the Investigating Officer.

9. The no-objection affidavit filed by the complainant also does not improve the applicant's case at bail stage. Such affidavit is not a substitute for evidence recorded before the trial Court, nor can it override the FIR and statements recorded during investigation, particularly when the record contains specific material connecting the applicant with the alleged occurrence.

10. The order dated 19.05.2026, whereby co-accused Jamaluddin and Jalal were acquitted of the charge in terms of compromise, also

does not advance the applicant's case at this stage. The present applicant was not party to the said compromise proceedings and his case has to be examined on the basis of material available against him in the present bail application. In such circumstances, the said order cannot, by itself, be made a ground for extending concession of bail to the applicant.

11. So far as delay in lodging of FIR, non-recovery of weapon and non-recovery of empties are concerned, these circumstances, in the present tentative assessment, do not outweigh the specific role attributed to the applicant and the ocular material collected during investigation.

12. The material available on record is to be tested on the touchstone of the settled principle governing further inquiry. It is now well settled law that at the bail stage only a bird eye-view of evidence is to be taken into consideration while deeper appreciation of evidence is not permissible, therefore, accused is required to establish a case of further inquiry. Of course, if it appears to the Court at any stage of the trial that there are no reasonable grounds for believing that the accused had committed a non-bailable offence and there are sufficient grounds for further inquiry into his guilt, the accused shall be released on bail. While exercising such discretion, the Courts must always satisfy its conscious between existence or non-existence of "reasonable grounds" to believe link or otherwise of accused with offence particularly when offence is falling within prohibitory clause. In every criminal case some scope of further inquiry into the guilt of the accused is exists, but on that consideration alone it cannot be claimed by the accused as a matter of right that he is entitled to bail. For bringing the case in the ambit of further inquiry, there must be some prima facie evidence, which on the tentative assessment, are sufficient to create doubt with respect of involvement of accused in the crime. In *Iqbal Hussain vs. Abdul Sattar and another* (PLD 1990 SC 758) while setting aside the bail granting Order of the High Court, the apex Court referred to the tendency in Courts to misconstrue the

concept of further inquiry and held as follows:-

“..... It may straightaway be observed that this Court has in a number of cases interpreted subsection (2) of section 497 Cr.P.C. which, with respect, has not been correctly understood by the learned Judge in the High Court nor has it been properly applied in this case. While he thought that it was a case of further inquiry which element as has been observed number of times in many cases, would be present in almost every case of this type. The main consideration on which the accused becomes entitled to bail under the said subsection is a finding, though prima facie, by the Police or by the Court in respect of the merits of the case. The learned Judge in this case avoided rendering such prima facie opinion on merits as is mentioned in subsection (2) of section 497 Cr.P.C. and relied only on the condition of further inquiry. This approach is not warranted by law. Hence, the case not being covered by subsection (2) of section 497 Cr.P.C., the respondent was not entitled to bail thereunder as of right.”

13. In view of the above facts and circumstances, the applicant has failed to bring his case within the ambit of further inquiry under Section 497(2), Cr.P.C. Consequently, this bail application is dismissed.

14. Needless to observe that the observations made hereinabove are tentative in nature and shall not prejudice the case of either party at trial.

JUDGE