

THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No. 435 of 2025

Applicants : Dilawar Yousuf, Muhammad
Shahzar & Zeeshan
through Mr. Musharraf H. Zaidi,
advocate

Respondent : The State
through Mr. Muhammad Raza,
Deputy Prosecutor General

Date of hearing : 4th March, 2025

Date of Order : 4th March, 2025

ORDER

Jan Ali Junejo, J.-- The present Criminal Bail Application has been filed on behalf of the Applicants/Accused, who are seeking post-arrest bail in connection with a case stemming from FIR No.90 of 2025, registered at P.S. Gadap City, Malir, Karachi, under Sections 337-H(2), 109 P.P.C. read with Section 25, of the Sindh Arms Act, 2013. The Applicants/Accused initially approached the learned Sessions Court by filing Bail Applications Nos.482, 483, 484 & 509 of 2025, which were subsequently dismissed by the Court of the learned IIIrd Additional Sessions Judge, Malir, Karachi, vide common Order dated 06-02-2025.

2. The facts relevant to the present criminal bail application are as follows:

“On February 1, 2025, SIP Mumtaz Ali Mirani, while on patrol duty with his subordinate staff, received a call from Irfan reporting aerial firing at Ziyarat Farm House. Upon arrival, they found 20 to 25 individuals engaged in

aerial firing. Around 20 to 22 of them fled the scene, some abandoning their weapons, while three suspects—Dilawar Yousuf, Muhammad Shahzar, and Zeeshan—were apprehended on the spot. Dilawar Yousuf was found in possession of a 30-bore pistol and cash, while Muhammad Shahzar had a 30-bore pistol, an Infinix phone, and cash. Zeeshan was carrying a 9mm pistol, a OnePlus phone, and cash. None of them could produce valid licenses for the weapons. A subsequent search of the farm led to the discovery of additional concealed weapons and spent bullet casings. A case was registered against the arrested individuals, the absconding suspects, and the farm owner, with separate cases registered for the recovered firearms”.

3. The learned counsel for the Applicant has argued that the Applicants are innocent and have been falsely implicated due to suspicion. It was contended that the weapon recovered from Dilawar Yousuf belongs to his father, who has a valid license, while another weapon belongs to Dilawar himself, for which he also holds a license. The weapons recovered from Zeeshan and Muhammad Shahzar were allegedly planted by the police. The defense maintained that a co-accused had already secured pre-arrest bail and that the accused were present at the farm for a wedding, where weapons were kept in vehicles for safety due to the prevailing security situation in Karachi. The counsel alleged police misconduct, stating that officers, in collusion with an informer, demanded money and, upon refusal, falsely implicated the accused by seizing weapons from the vehicles. It was further argued that the prosecution case lacks credibility as no names of fleeing suspects were disclosed, no independent witnesses were included, and the informer Irfan was neither associated as a witness nor made a complainant. The only

relevant charge under Section 337H(2) PPC is bailable and does not fall within the prohibitory clause of Section 497(2) Cr.P.C. Additionally, sections 109 PPC and 25 of the SAA were deemed inapplicable, as separate FIRs had already been lodged for weapon recovery. The defense emphasized that there is no reasonable ground to believe the accused committed the offense and cited legal precedents to assert that bail should be granted due to the presumption of innocence, lack of direct evidence, and the principle that prolonged detention without conviction is unjust. It was also argued that the accused are not habitual offenders, the case relies solely on alleged weapon recovery, and all witnesses are police officials, minimizing the risk of evidence tampering. Lastly, the learned counsel prayed for grant of bail to the accused persons.

4. The learned Deputy Prosecutor General has argued that the accused were involved in aerial firing, which is a grave offense that endangers public safety and creates a climate of fear and lawlessness. He further contends that the recovery of illegal firearms and spent bullet casings underscores the gravity of the crime. He asserts that none of the apprehended individuals could produce valid licenses for the firearms in their possession, which is a clear violation of the law. He emphasizes that the discovery of additional concealed weapons at the farm indicates premeditation and a potential threat to public order. He points out that the fact that 20 to 22 individuals fled the scene suggests a coordinated effort to evade law enforcement, raising concerns that the accused, if released on bail, may also abscond. He further highlights that the recovery of abandoned weapons indicates that the suspects were attempting to avoid prosecution. He argues that the accused were apprehended at the scene with weapons and other incriminating items (cash, phones), which directly links

them to the crime. He stresses that the presence of spent bullet casings and additional weapons at the farm strengthens the case against them. He contends that granting bail to individuals involved in such a serious offense could pose a risk to public safety and send a negative message about the rule of law. He further asserts that the use of illegal firearms in a public setting demonstrates a blatant disregard for the law and the safety of others. He notes that the case involves multiple suspects, including absconding individuals and the farm owner, indicating a broader criminal network that is still under investigation. He warns that granting bail at this stage could hinder the investigation and allow the accused to tamper with evidence or influence witnesses. He concludes by emphasizing that the registration of separate cases for the recovered firearms highlights the additional legal violations and the need for a thorough judicial process, urging the court to consider the broader implications of granting bail in such a case, particularly given the on-going investigation and the involvement of multiple suspects. Lastly, the learned DPG prayed for dismissal of bail application.

5. I have given due consideration to the arguments advanced by the learned counsel for the applicant/accused as well as the learned Additional Prosecutor General. Furthermore, I have meticulously examined the material available on record with utmost care and judicial prudence. A review of the case record reveals that the **primary allegation** against the applicants centers on their alleged involvement in **aerial firing** (indiscriminate or celebratory gunfire) at a private farmhouse. The applicants have been formally charged under **Section 337-H(2) of the Pakistan Penal Code (P.P.C.)**, an offense explicitly categorized as **bailable** under statutory law. For an offense under Section

337-H(2) of the Pakistan Penal Code (P.P.C.) to be established, the prosecution must demonstrate that the accused engaged in an act that was either rash (marked by recklessness or imprudence) or negligent (a failure to exercise reasonable care). Crucially, such an act must have endangered human life or jeopardized the personal safety of others, meaning it must have created a real and tangible risk of harm to individuals. In the present case, the incident allegedly occurred at a private farmhouse where, according to the record, no individuals other than the accused were present at the time. This factual matrix raises significant questions about whether the accused's actions—even if rash or negligent—actually posed a risk to human life or public safety, as required by law. At this stage, the court must determine whether the accused's conduct met the threshold of endangering others, a prerequisite for invoking Section 337-H(2). If the prosecution fails to substantiate these essential ingredients—specifically, the presence of a real risk to human life or safety—the offense cannot be legally sustained. Consequently, since the offense in question is classified as bailable, the applicants' right to bail cannot be withheld solely on presumptive grounds. This principle is firmly rooted in jurisprudence, notably affirmed by the Honourable Supreme Court of Pakistan in *Alam Zeb and Another v. The State and Others (PLD 2014 SC 760)*. The Apex Court emphasized that offenses designated as bailable by the legislature cannot be treated as “heinous” or “fatal to society” by judicial interpretation, as such classification falls exclusively within the legislature's domain. Furthermore, even if an offense is perceived as serious, Courts lack discretion to deny bail if the legislature has expressly classified it as bailable. The judiciary is bound to respect this legislative intent, as underscored in *Alam Zeb's* case, which clarifies that Courts cannot impose stricter standards than those prescribed by statute. Thus, in the absence

of concrete evidence satisfying the elements of Section 337-H(2), withholding bail would contravene both statutory provisions and established judicial precedent. The applicants, therefore, are entitled to bail as a matter of legal right, not judicial concession.

7. Given these circumstances, I am of the considered view that, based on the prosecution's material in its present form, the case falls within the scope of further inquiry as envisaged under Section 497(2) of the Code of Criminal Procedure (Cr.P.C.). In light of the foregoing discussion, I am convinced that the Applicants have successfully established a prima facie case for the grant of bail.

8. In light of the foregoing analysis and reasoning, the bail application filed on behalf of the Applicants (accused) is hereby allowed. Consequently, post-arrest bail is granted to the Applicants, subject to the submission of a solvent surety in the amount of Rs. 1,00,000/- (Rupees One Hundred Thousand) per Applicant, to the satisfaction of the trial Court. This shall be accompanied by the execution of a personal recognizance (P.R.) bond in the corresponding sum. It is further emphasized that the observations made in this order are solely for the purpose of deciding this bail application and shall not influence the merits of the case during the trial proceedings.

JUDGE