

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Application No. S-104 of 2025

Date	Order with signature of Judge
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**Applicant:** Hubdar Ali Jatoi.  
**Through** Mr. Abdul Raheem Ansari, advocate.

**The State:** Through Syed Sardar Ali Shah, Addl. Prosecutor General.

**Complainant:** Muhammad Shahzad. Through , Mr. Alam Sher Bozdar, Advocate.

**Date of hearing.** 13-03-2025.  
**Date of decision.** 17-03-2025.

ORDER

Ali Haider 'Ada',J:- Through this application, the applicant/accused Hubdar Ali Jatoi seeks pre-arrest bail in Crime No.16/2023, offence u/s 324, 148, 149 PPC registered at Police Station Patni as his bail application was dismissed by learned Vth Additional Sessions Judge Sukkur vide order dated 20-01-2025, hence he preferred the instant bail application.

2. Briefly the facts of the instant case are that Complainant Muhammad Shahzad lodged the FIR on 30-03-2023 alleging therein that there was dispute of outstanding amount of complainant with applicant Hubdar Ali Jatoi and time and again they demanded which applicant party antagonized and issued threats thereafter they attacked upon complainant party and murder took place, such cases are pending before Court of law and applicant issued threats of murder. On the day of incident at evening time complainant, his maternal uncle Feroz Ali and cousin Ayaz Ali were standing outside the house where applicant Hubdar

Ali, Deedar Ali, Siraj, Ali Raza and Shoukat Ali armed with deadly weapons came on two motorcycles. The accused Hubdar Ali fired upon complainant party which hit to his cousin who raised cries and fell down while other accused persons made firing upon complainant party thereafter they fled away. The complainant party took injured Ayaz Ali to hospital for treatment thereafter, complainant lodged FIR.

3. Learned counsel for the applicant contended that there is delay of one day in recording the FIR without any explanation and the applicant was on duty being ASI posted as incharge Check-post Sukkur Township under the jurisdiction of Police Station, Airport Sukkur. Further submits that the role of applicant is to falsely implicate him, however, no incident at the hands of applicant was committed.

4. On the other hand learned counsel for complainant submitted that applicant is nominated with specific role as he armed with Kalashnikov and fired upon the injured which hit him on his abdomen and such injury was declared as Jaifah in nature. He further submits that medical evidence is league with ocular set of evidence. He mainly contended that applicant concealed the facts before this Court or even before trial Court as his bail application was dismissed by this Court on 23.04.2024 and such fact was not placed before learned trial Court as well before this Court, he repeated his pre-arrest bail before learned trial Court and before this Court without annexed the dismissal order, further ads that the applicant in his bail application in last paragraph added that it is a second bail application as such act is without *malafide* intention as well as falls misconduct the proceedings. Learned counsel submitted copy of order dated 23.04.2024 of this Court.

5. Learned Additional Prosecutor General affirmed the arguments advanced by learned counsel for complainant and further added that plea of 'alibi' is no useful ground for grant of bail as the same be considered at the time of defence. He places reliance upon the case of Raja Nadeem Rafique v. The State and another (2014 P.Cr.LJ 1226) and Waqar-ul-Haq v. The State (1985 SCMR 974).

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

7. The record indicates that previously this Court dismissed his earlier pre-arrest bail, however, he failed to disclose this information and misleading to it as his second bail application he simply stated that it is his second bail application without annexing any copy of order. Moreover, the applicant is involved in commission of offence with specific role. The record reveals that his previous bail application was dismissed by this Court on merits and prior to dismissal of his earlier bail he was granted protective bail, the instant bail is third one. Further the bail memo presented before trial Court did not reveal that his bail had been dismissed by this Court, it means that applicant concealed the real facts. So far plea of 'alibi' is concerned, the same could not be judged at bail stage. Reliance is place upon the case of Waqar-ul-Haq v. The State (*supra*).

The challan of the case has been submitted and applicant is continued in enjoyment of bail by concealing the facts with Court as thereby takes advantages of his own wrong. It is law maxim that "*Nullus Commodum Capere Potest De Injuria Sua Propria*" (No man can take advantage of his own wrong). It is pertinent to mention here that already the bail was dismissed by this Court and the applicant intentionally involved in concealment of facts and falsehood so as no right to approach the Court and enjoying the wrongful act on his own. As such litigant must be similarly thrown out at any stage of litigation. The

Honourable Supreme Court in case of *Rana Muhammad Arshad v. Muhammad Rafique* reported in PLD 2009 Supreme Court 427 has exercised the guidelines as under;

- (a) Grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives;
- (b) Pre-arrest bail is not to be used as substitute or as an alternative for post-arrest bail;
- (c) Bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified through subsection(2) of section 497 of Code of Criminal Procedure i.e, unless he established the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and that there were, in fact, sufficient grounds warranting further inquiry into his guilt;
- (d) Not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motives, particularly on the part of the police; to cause irreparable humiliation to him and to disgrace and dishonor him;
- (e) Such a petitioner should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that he had not been a fugitive from law; and finally that,
- (f) In the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest, must, in the first instance approach the court of first instance i.e. the Court of Sessions, before petitioning the High Court for the purpose.

In the case of *Mukhtiar Ali v. The State* (2023 MLD 684), this Court while dealing with the bail application has observed that “Deeper appreciation of evidence is neither permissible nor warranted at bail stage but at the same time Court is not precluded from tentatively perusing the evidence of eye witnesses, the recovery, the medical reports to form a tentative opinion to determine whether the accused was prima facie connected with the commission of offence or not.”

8. In view of above discussion, it appears that sufficient material is available on record to connect the applicant with commission of offence alleged against him, falling within the prohibitory clause, therefore, the applicant is not entitled for grant of extra ordinary concession in shape of pre-arrest bail. Accordingly, this bail application was dismissed. Consequently, interim order already granted to applicant on 10.02.2025 was recalled by short order dated 13.03.2025 whereby the applicant was taken in to custody with directions to produce him before the trial Court on the date of hearing. These are the reasons of short order dated 13.03.2025.

9. Needless to mention that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of the applicant on merits.

*J U D G E*

*Ihsan/P.A*