

## IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Bail Application No.S-282/2025

Cr. Bail Application No.S-326/2025

Applicant : Nawaz Ali Magsi  
(In Cr. Bail Appln. No.282/2025) Through Mr. Muhammad Ali Pirzada, Advocate

Applicants : Ali Gul alias Mureed Abbas and Amir Ali  
(In Cr. Bail Appln. No.326/2025) Through Mr. Ashique Ali Jatoi, Advocate

Respondent : The State  
Through Mr. Nazir Ahmed Bhangwar, DPG.

Date of hearing : 07-07-2025

Date of order : 07-07-2025

### **ORDER**

**KHALID HUSSAIN SHAHANI-J.**:-Through these two post arrest Criminal Bail Applications, the applicants Nawaz Ali Magsi, Ali Gul alias Mureed Abbas and Aamir Ali seek their release in a case bearing Crime No.140 of 2025, registered at Police Station Kamber City, offence u/s 401, 324, 353, and 34 PPC. Their bail pleas were earlier declined by the court of learned Sessions Judge, Kamber Shahdadkot at Kamber, vide orders dated 29.05.2025 and 05.06.2025 respectively.

2. According to the contents of the FIR, on 25.04.2025 at about 0100 hours, a police party headed by ASI Manzoor Ali Tolani, during routine patrolling, allegedly received spy information that certain suspects were present near Khan Wah, Kamber-Shahdadkot Road, armed with weapons and intending to commit robbery. The police party reached the spot and allegedly found applicants and unidentified armed persons in the headlights of the official vehicle. It is further alleged that the accused persons opened fire upon the police, which was retaliated in self-defence. The firing reportedly continued for 4 to 5 minutes, after which

the accused fled the scene. The FIR was lodged by the police on behalf of the State.

3. Learned counsels for the applicants have contended that the FIR is based on generalized and omnibus allegations, with no specific role attributed to either applicant. Despite the alleged exchange of fire lasting several minutes, it is admitted that no injury was sustained by any member of the police party, nor did any bullet hit the police vehicle, thereby raising doubts regarding the authenticity of the alleged encounter. Furthermore, no incriminating article was recovered from applicants Ali Gul and Nawaz Ali at the time of their arrest, and the recovery of a T.T pistol from applicant Aamir Ali was made in custody without independent mashirs, in violation of Section 103 Cr.P.C., which weakens the prosecution's case. It is further argued that the applicants are no longer required for investigation as the challan has already been submitted, and that the case merits further inquiry as provided under Section 497(2) Cr.P.C.

4. On the other hand, the learned Deputy Prosecutor General vehemently opposed the grant of bail. He argued that all the applicants were named in the FIR with specific attribution of participation in an armed attack on a police party during the course of their official duties. He emphasized that the applicants had gathered with the common intention of committing robbery, and were apprehended in a planned attempt to commit a cognizable and serious offence against public safety. It was further contended that the offence falls within the prohibitory clause of Section 497(1) Cr.P.C., and that granting bail in such cases would amount to undermining the authority of the law enforcement agencies. The DPG further submitted that the recovery of a weapon from applicant Aamir Ali connects him directly with the alleged

offence, and the applicants' conduct shows their brazenness in confronting a police patrol, thereby disentitling them from the discretionary relief of bail.

5. I have heard the learned counsel for the parties and have examined the available record with their assistance.

6. It is observed, while the prosecution alleges that an encounter occurred between the accused and the police party, it is an admitted position that no injury was caused to any member of the police party, nor was any police vehicle struck by a bullet. These facts tend to cast doubt on the genuineness of the occurrence. Moreover, the recovery from applicant Aamir Ali is shown to have been made in police custody without the association of independent witnesses as mandated by Section 103 Cr.P.C., thereby reducing its evidentiary value, as has been held in *Muhammad Tanveer v. The State* (PLD 2017 SC 733). Insofar as applicant Ali Gul and Nawaz Ali is concerned, no recovery of any incriminating article has been shown against them.

7. Regarding the alleged intention to commit robbery, it appears that the assertion is merely speculative and not supported by any overt act or preparatory material. It is beyond comprehension how the police could conclusively determine the specific mental intention of the accused merely based on their presence at the spot, without any supporting recovery or circumstantial material. The Hon'ble Supreme Court in *Zulfiqar Ali v. The State* (2021 SCMR 492) has held that bald allegations without supporting evidence do not satisfy the threshold to justify denial of bail. Moreover, for the application of Section 401 PPC, the law requires proof of habitual association with a gang formed for the purpose of committing robbery, which is conspicuously absent in the

present case. The inclusion of Section 401 PPC, therefore, appears to be misconceived in the absence of ingredients such as continuity of association and habitual commission.

8. The applicant Amir Ali has already been granted bail in the connected offshoot case (Crime No.143/2025) by this Court. The prosecution has failed to bring on record any compelling reason to justify their continued detention. The investigation is complete; challan has been submitted; and the trial is yet to commence. In such circumstances, the Hon'ble Supreme Court's guidance in *Tariq Bashir v. The State* (PLD 1995 SC 34) and *Riaz Jafar Natiq v. The State* (2011 SCMR 1708) is applicable, wherein it was held that if the case is one of further inquiry and the accused is no longer required for investigation, the grant of bail is a rule.

9. In view of the foregoing, the case against the applicants appears to fall within the ambit of further inquiry as envisaged under Section 497(2) Cr.P.C. Accordingly, the applicants are admitted to post-arrest bail, subject to their furnishing solvent surety in the sum of **Rs.50,000/- (Rupees Fifty Thousand only) each** and **P.R. bond in the like amount** to the satisfaction of the learned trial Court.

10. Needless to mention, the observations made hereinabove are tentative in nature and shall not prejudice the merits of the case at the time of trial.

**JUDGE**