

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Miscellaneous Application No.S-242 of 2025

Applicant: Muhammad Arib s/o Abdul Fattah Brohi,
through Mr. Farhat Ali Bugti, Advocate.

Respondents: Ghulam Murtaza @ Murtaza @ Sagar and another,
through Mr. Rafique Ahmed K.Abro, Advocate.

The State: through Mr. Aitbar Ali Bullo, Deputy Prosecutor General,
Sindh.

Date of Hearing: 15.08.2024

Date of Order: 15.08.2024

ORDER

ALI HAIDER 'ADA' I.- Through this Criminal Miscellaneous Application, the applicant, being the complainant, has assailed the order dated 04.06.2025 passed by the learned Additional Sessions Judge-I, Shahdadkot, whereby the pre-arrest bail already granted to respondents No.1 and 2 was confirmed. The said respondents stand nominated in FIR No.38/2024, which was lodged at the instance of the present applicant.

2. The prosecution case, as set forth in the FIR, is that on 13.06.2024 at about 2100 hours, the applicant/complainant lodged FIR under Sections 302, 449, 34 PPC at Police Station Qubo Saeed Khan. It was alleged therein that on 11.06.2024, after having dinner, the complainant along with his nephew Asghar, Noor Nabi, and his brother Sadaruddin were sitting on the roof of their shop for chit-chat. Thereafter, they went to sleep while the solar bulbs remained lit and the door was left open. On 12.06.2024 at about 02:00 am., upon hearing noise, the complainant woke up and saw three unknown persons, stating that though he could not identify them at the spot, he would be able to identify them if seen again. Out of those assailants, two were armed with pistols and one was holding a brick. The person holding the brick struck it on the forehead of Sadaruddin, causing fatal injuries, due to which he later succumbed to death. After completion of initial formalities, the FIR was registered. Subsequently, during investigation, the challan was submitted by the Investigating Officer wherein the names of Respondents

No.1 and 2 were placed in the charge sheet. Their implication was based upon further statements recorded by the police on 16.04.2025, 17.04.2025, and 22.04.2025, attributed to the complainant and other prosecution witnesses, alleging that Respondents No.1 and 2 had business relations with the deceased and were, in fact, responsible for the incident. The learned trial Court, however, proceeded to grant them pre-arrest bail, which was later confirmed through the impugned order.

3. Learned counsel for the applicant/complainant submits that the widow of the deceased recorded her statement on 16.04.2025, wherein she categorically implicated respondents No.1 and 2 as the assailants of her husband. This fact, according to him, was also disclosed by the complainant Muhammad Arib, who consistently maintained that they subsequently acquired knowledge about the involvement of respondents No.1 and 2. It is contended that there exists no previous enmity between the parties and, therefore, there was no ulterior motive to falsely implicate the respondents. Learned counsel argued that the implication of respondents No.1 and 2 was based purely on factual developments that surfaced during investigation, which establish them as the real culprits of the incident. In support of his submissions, he placed reliance upon the case reported as 2020 SCMR 2081.

4. Conversely, learned counsel for respondents No.1 and 2 argues that there is an unexplained delay in recording the so-called further statements, particularly when even the FIR itself was lodged after one day's delay. He further contended that the applicant had no independent source of knowledge to identify or attribute any role to respondents No.1 and 2, and thus their subsequent implication is based on unseen and unreliable evidence. It was emphasized that the complainant, in order to settle certain business disputes, has falsely involved the respondents.

5. On the other hand, learned Deputy Prosecutor General submits that the scope of Section 497(5), Cr.P.C. is very limited and the instant application does not fulfill the ingredients required for cancellation of bail. He further argued that the reliance placed upon the further statements is misplaced, as such material would require deeper appreciation at trial, which cannot be undertaken at this preliminary stage. It has thus submitted that respondents

No.1 and 2 were rightly granted bail and that the impugned order does not warrant any interference.

6. I have heard the learned counsel for the parties and carefully perused the available record in light of the applicable legal provisions.

7. The record reflects that the FIR was lodged on 13.06.2024, whereas the incident had taken place on 12.06.2024, thereby reflecting a delay of one day in its registration, which has not been explained by the complainant. It is also noticeable that the FIR is silent with regard to any specific description or identification of the assailants, which renders the subsequent implication of respondents No.1 and 2 through supplementary statements a matter requiring deeper scrutiny at the stage of trial. In the context of delay in FIR, reliance is placed upon the case of *Mazhar Ali v. The State* (2025 SCMR 318).

8. Even in the further statements recorded by the Investigating Officer, the prosecution witnesses did not attribute any specific role to respondents No.1 and 2, particularly with regard to the allegation as to who inflicted the brick blow upon the deceased. Moreover, there is an inordinate delay of about ten months in recording such further statements, which delay has not been explained by the prosecution. It is also significant that even in the said further statements, there is no mention as to from whom or in what manner the complainant acquired knowledge regarding the involvement of respondents No.1 and 2 in the commission of the offence. In this context, reliance is placed upon the case of *Lal Marjan and another v. Islam Gul and others* (2021 SCMR 301), wherein the Hon'ble Supreme Court granted bail about unexplained delay in recording further statements

9. It is a settled proposition of law that the scope for cancellation or recall of a bail order, once granted in favour of an accused, is very limited and requires careful judicial scrutiny. The record indicates that there is no allegation of misuse of the concession of bail by respondents No.1 and 2, nor is there any material to suggest that the learned Court below ignored material infirmities while extending such concession. On the contrary, respondents No.1 and 2 appear to be entitled to bail on merits. Support is

drawn from the case of *Ahmed Shakeel Bhatti and others v. The State and others* (2023 SCMR 1), wherein it was held that:

9. The scope of interference to be made against the grant of bail by this Court in its appellate jurisdiction is well settled and hardly needs reiteration. Cancellation of orders granting bail are ordinarily resorted to by the Court on two grounds: (i) when the impugned order is perverse on the face of it or (ii) when the impugned order has been made in clear disregard of some principle of the law of bail. A perverse order is one that has been passed against the weight of the material on the record or by ignoring such material or without applying the relevant legal criteria or without giving reasons. Such an order is also termed as arbitrary, whimsical and capricious. None of these grounds for cancellation of bail are attracted in the present case. Consequently, we are not inclined to interfere in the impugned order of the High Court. Accordingly, leave to appeal is declined in Criminal Petition No.1197-L of 2021, and it is dismissed.

10. As regards the contention that mala fides were not properly considered, it is important to reiterate that mala fides are seldom proved through direct evidence; rather, they are ordinarily to be inferred from the attending facts and circumstances of each case. The Hon'ble Supreme Court in the case of *Muhammad Saeed v. The State through A.G. Islamabad and another* (2025 SCMR 629) has held that:

5. As regards the contention that mala fide was not properly considered, it is important to note that mala fide cannot always be proved through direct evidence and is often to be inferred from the facts and circumstances of the case.¹ Since the High Court found no reasonable grounds to justify the arrest of the respondent-accused and no sufficient incriminating material to connect him to the offence, the grant of pre-arrest bail was justified in the facts and circumstances of the case.

11. In view of the foregoing reasons and discussion, I find no justification to interfere with the order of the learned trial Court whereby bail was granted to Respondents No.1 and 2. Consequently, the instant Criminal Miscellaneous Application for cancellation of bail is hereby dismissed, with no order as to costs.

JUDGE