

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

CrI. Bail Appln. No. S-456 of 2025

Applicants : 1. Mudasir Hussain son of Inayat Hussain
2. Safdar Ali son of Nazar Ali Sarwari
Through Mr. Ghulam Shabbir Shar, Advocate

Complainant : Siraj Ali, through Mr. Sohbat Ali Joyo, Advocate

The State : Through Mr. Muhammad Raza Katohar, DPG

Date of hearing : 18.08.2025
Date of order : 27.08.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicants Mudasir Hussain and Safdar Ali seek post arrest bail in a case bearing crime No. 27 of 2024, for offence under Sections 452, 114, 324, 148, 149, 506/2, 504, 337-H(ii), 337-A(i), 337-F(i), 336, and 337-A(iii) PPC of PS Rohri.

2. It is pertinent to mention that this Court has a detailed history of considering multiple bail applications from the same applicants. Pre-arrest Bail Application No. 265/2024 (Nazar Ali & Safdar Ali) was dismissed on merits vide order dated 30.04.2024, wherein this Court found sufficient prima facie evidence to connect the applicants with the alleged offences. Post-arrest Bail Application No. 1137/2024 (Mudasir Hussain) was dismissed on merits vide order dated 07.06.2024, where the Court held that the specific role attributed to the applicant in causing grievous hurt with dangerous weapons precluded bail under Section 497 Cr.P.C. Second Post-arrest Bail Application No. 1262/2024 (Mudasir Hussain) was filed on medical grounds claiming suffering from kidney stone and shortage of white cells in blood. This application was also dismissed vide order dated 14.06.2024, due to failure to attach contemporaneous findings of the consultant to prove the said contention. The medical test reports submitted were from 2021, rendering them irrelevant for assessing current medical condition.

3. The present application is filed by applicant Safdar Ali for the second time and by Mudasir Hussain for the third time, primarily on the ground of languishing behind bars and alleged inordinate delay in trial proceedings despite earlier directions from this Court.

4. The succinct facts of the prosecution case, as per FIR lodged on 06.02.2024 at 1200 hours by complainant Siraj Ali Sarwari at Police Station Rohri are that on 19.04.2024 at about 0900 hours, the applicants, duly armed with iron rods, along with four unidentified accomplices (two carrying pistols and two carrying lathis), forcibly entered the complainant's house where his father Nazar Muhammad and maternal cousin Muhammad Azim were engaged in roof construction work. The incident unfolded as Nazakat Ali instigated the entire group by directing them to "teach a lesson and murder" the victims, as they had allegedly restrained construction work earlier. On his instigation, Mudasir Hussain (applicant) struck complainant's father Nazar Muhammad on the forehead above the eyebrow with an iron rod, intending to commit murder. Nazar Ali personally struck the same injured person on his right cheek with an iron rod, also with intent to murder. Safdar Ali (applicant) struck the complainant on his face with an iron rod, intending to murder him. The unidentified accomplices simultaneously caused lathi blows to the complainant's back and legs. As a result of this coordinated assault, both injured persons fell to the ground with blood oozing from their wounds. The complainant raised hues and cries, attracting neighborhood residents, whereupon the assailants fled after issuing threats of dire consequences. The final medico legal certificates issued by the Medical Officer describe the injuries as: *Shajjah-i-Hashmiah* (wounds reaching the brain membrane) to the forehead and cheek and *Itlaf-e-Salahiyat-e-Udw* (loss of organ function) specifically to the right eye of Nazar Muhammad. After completion of investigation, challan was submitted to the trial Court. Formal charge was framed on 08.08.2024, and the matter is currently at the evidence recording stage, though no substantive witness examination has yet commenced.

5. Learned Advocate for the applicants advanced his arguments by stating that the prosecution is entirely concocted with mala fide intentions; no reasonable grounds exist for believing that the applicants committed the alleged offences; the case stems from a civil property dispute that has been criminalized to harass the applicants; critical inconsistencies exist in the FIR and challan dates; despite this Court's direction on 07.10.2024 to conclude trial within two months, no progress has been made; no prosecution witness has been examined even after charge was framed on 08.08.2024; applicants are languishing in custody for over one year without advancement in proceedings; such inordinate delay violates fundamental rights guaranteed under the Constitution; the

applicants belong to poor families and their continued detention causes severe hardship; the case requires further inquiry into guilt, warranting bail under Section 497(2) Cr.P.C.; civil nature of the underlying dispute should be considered as a mitigating factor. Learned advocate relied upon the case laws cited at 2018 P.Cr.L.J 952, emphasizing that delay in trial proceedings entitles accused to relief, 2022 MLD 716, holding that civil disputes converted to criminal cases require scrutiny, 2025 YLR 246, bail on hardship grounds where trial court fails to proceed expeditiously, 2020 SCMR 458, fundamental right to speedy and fair trial and 2023 SCMR 1450, relief in cases of inordinate delay despite court directions, 2007 YLR 853, 2003 PCLJ 73, and 2007 YLR 2782.

6. Mr. Katohar, learned DPG and counsel for complainant vehemently opposed the bail application on the pretext that each applicant has been assigned a specific and distinct role in the commission of heinous offences. They urged the attack was premeditated, coordinated, and executed with dangerous weapons (iron rods), section 324 PPC is clearly attracted, which falls within the prohibitory clause of Section 497 Cr.P.C, the injuries caused constitute *Shajjah-i-Hashmiah* and *Itlaf-e-Salahiyat-e-Udwi*, indicating severity, the complainant and potential witnesses support each other's versions consistently, the final medico legal certificates corroborate the prosecution's case regarding nature and extent of injuries, all available material substantiates the prosecution's narrative, the grave likelihood of evidence tampering if applicants are released, potential for repeating similar offences given the violent nature of their conduct, risk of intimidating witnesses and complainant, no exceptional circumstances exist to warrant discretionary relief under Section 497(2) Cr.P.C, joint liability under Section 149 PPC is established through coordinated criminal action, any delay in proceedings is attributable to applicants' repeated frivolous applications rather than prosecutorial or judicial lethargy. Learned advocate for complainant relied upon the case law cited at 2023 SCMR 1131, which is regarding Stringent approach for bail in weapon enabled violence cases, 1998 SCMR 897, denial of bail where specific roles are attributed and medical evidence supports prosecution, 2002 SCMR 1370, bail in cases involving Section 324 PPC requires exceptional circumstances and 2020 SCMR 594, joint criminal enterprise and Section 149 PPC bar routine bail and lastly 2020 SCMR 937, medical evidence supporting grievous hurt precludes bail.

7. After hearing learned counsel for the respective parties at considerable length and carefully examining the record, including the police

file, FIR, investigation diary, medical reports, and all relevant material, I am of the opinion that the material on record establishes a strong prima facie case against the applicants. The prosecution has successfully demonstrated that, Mudasir Hussain struck the complainant's father on the forehead causing *Shajjah-i-Hashmiah* and Safdar Ali struck the complainant on the face. The use of iron rods as dangerous weapons, coupled with injuries declared as *Shajjah-i-Hashmiah* (wounds reaching the brain membrane) and *Itlaf-e-Salahiyat-e-Udwi* (permanent loss of vision in right eye), clearly attracts Section 324 PPC. As held in *Sheqab Muhammad v. The State* and reaffirmed in multiple precedents, "Section 324 PPC draws no anatomical distinction between vital or non-vital parts of human body. Once the trigger is pressed and the victim is effectively targeted, intention or knowledge as contemplated by the section is manifested".

8. The prohibition contained in Section 497 Cr.P.C. against granting bail in cases under Section 324 PPC is thus fully attracted. The applicants have made much of the alleged inconsistencies in dates. However, careful examination reveals, the manual FIR consistently shows the incident date as 19.04.2024, the investigation diary maintains the same date throughout, typographical errors in the typed/printed order showing 06.02.2024 appear to be clerical mistakes. The challan reference to 19.12.2023 has been corrected on record. Such minor discrepancies, when the core narrative remains consistent, do not vitiate the prosecution case. As established in numerous precedents, clerical or typographical errors that do not affect the substance of the charge cannot be grounds for dismissing an otherwise strong case.

9. This is perhaps the most compelling argument advanced by the applicants, and it requires careful consideration that this Court directed trial completion within two months vide order dated 07.10.2024, nearly ten months have elapsed since that direction and charge was framed on 08.08.2024, but no witness examination has commenced. The applicants have been in custody for varying periods (Mudasir since June 2024, Safdar since November 2024) while inordinate delay in criminal proceedings is indeed a serious concern that can violate an accused's fundamental right to speedy trial, several factors must be considered. The record shows that the applicants themselves have contributed significantly to the delay through multiple bail applications (three separate attempts), previous medical bail application with insufficient documentation, failure to press for expeditious proceedings after charge was framed. As held in

Muhammad Aslam v. State (1998 SCMR 2147) and Behram v. State (2003 PCr.LJ 73), delay based relief is typically granted where, the delay is attributable to state or judicial inaction, the accused has shown due diligence in seeking trial and no prejudice would result to the prosecution.

10. Here, the applicants cannot demonstrate that they have actively sought expeditious trial or that the delay is entirely beyond their control. The medical evidence in this case is particularly damaging to the applicants' case. Injuries classified as *Shajjah-i-Hashmiah* indicate wounds that penetrate to the brain membrane. *Itlaf-e-Salahiyat-e-Udwi* to the right eye represents permanent disability/loss of vision. Such injuries can only result from severe force applied with dangerous weapons. The medical evidence fully supports the ocular account provided by the complainant and potential witnesses. This creates a cogent prosecutorial framework that would be difficult to dismiss as fabricated or false. The prosecution has successfully established the ingredients of Section 149 PPC (unlawful assembly in prosecution of common object) and to cause grievous hurt/murder to the complainant and his father, each applicant played a specific role in the coordinated assault. The use of weapons and severity of attack demonstrates clear knowledge. As held in 2020 SCMR 937, cases involving joint criminal enterprise with dangerous weapons require exceptional circumstances for bail, which are conspicuously absent here.

11. While the Court is not unmindful of the hardship caused by prolonged detention, bail cannot be granted merely to alleviate such hardship when grave charges with strong evidence are involved. The Court must balance individual liberty interests of the applicants, public interest in ensuring effective prosecution of serious crimes, risk of evidence tampering or witness intimidation, likelihood of trial completion. The severity of charges (potential murder/grievous hurt with weapons), strength of prosecution evidence, and risk factors outweigh the hardship argument in this case.

12. The cases relied upon by applicants generally deal with delay attributable to court/state inaction, weak prosecutorial cases requiring further inquiry, civil disputes criminalized without substantial evidence, however, the present case involves strong medical and ocular evidence, coordinated violent assault with dangerous weapons, clear prima facie case under prohibitory provisions. The authorities cited by the prosecution (2023 SCMR 1131, 2002 SCMR 1370, 2020 SCMR 937) directly apply to cases involving section 324 PPC with dangerous weapons, joint criminal enterprise under Section 149 PPC,

strong prosecutorial evidence. For discretionary bail in non-bailable offences, the accused must demonstrate case requires further inquiry into guilt, prosecution evidence is insufficient or contradictory, exceptional circumstances justify release, but none of these factors are satisfied here because evidence is cogent and corroborative, no substantial contradictions in core prosecution narrative, no exceptional medical, humanitarian, or legal circumstances and violence with dangerous weapons indicates propensity for serious crime, coordinated group action suggests organized criminal behavior, risk of evidence tampering in ongoing trial and potential intimidation of complainant/witnesses, the nature of the alleged assault coordinated violence with weapons causing permanent disability raises legitimate concerns about public safety if applicants are released.

13. After exhaustive consideration of all arguments, evidence, and legal precedents, I am of the candid opinion that the prosecution has established a cogent case supported by medical, ocular, and circumstantial evidence that would be difficult to characterize as requiring "further inquiry" under Section 497(2) Cr.P.C. Section 324 PPC is clearly attracted based on the use of dangerous weapons causing *Shajjah-i-Hashmiah* and permanent disability, invoking the statutory bar under Section 497 Cr.P.C. while delay exists, it cannot be attributed solely to state/judicial inaction, and the applicants have not demonstrated due diligence in seeking expeditious trial. Substantial risk of evidence tampering, witness intimidation, and potential for repeating offences militates against bail. The applicants have failed to establish any compelling medical, legal, or humanitarian grounds that would override the statutory prohibition.

14. Recognizing the legitimate concern about trial delay and the importance of expeditious justice, learned trial court is directed to commence recording of prosecution evidence within fifteen (15) days of receipt of this order, starting with the complainant and medical officer. Once evidence recording begins, the Court shall hold daily hearings (excluding weekends and holidays) to ensure continuous progress. The entire trial, including prosecution evidence, defense evidence (if any), and final arguments, shall be completed within sixty (60) days of this order. The trial Court shall submit weekly progress reports to this Court through Additional Registrar indicating the number of witnesses examined and any impediments to speedy disposal. This

case shall be given priority over other non-urgent matters to ensure expeditious completion.

15. The previous direction dated 07.10.2024 to complete trial within two months was advisory rather than mandatory. However, the present directions are binding and mandatory. Non-compliance without sufficient cause will invite appropriate remedial action from this Court, may result in transfer of the case to another Court and could lead to disciplinary proceedings if delay is attributable to judicial negligence.

16. If any party creates impediments to the expeditious conclusion of trial, including non-appearance of witnesses without valid reasons, frivolous applications for adjournments, any attempt to delay proceedings, the trial Court is empowered to take action as per law.

17. For the detailed reasons set forth above, the post arrest bail application is hereby dismissed. However, in the interest of ensuring expeditious justice and recognizing that prolonged detention without trial violates fundamental rights. Therefore, learned trial Court is directed to implement the above-mentioned timeline strictly. All observations made in this order are tentative in nature and confined to the disposal of this bail application. They shall have no bearing whatsoever on the merits of the case at trial, which shall be decided by the trial Court based on evidence produced before it.

J U D G E