

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. S-759 of 2025

Applicant : Shoukat Ali son of Ali Murad, Shar
Through Mr. Noor Hassan Malik, Advocate

The State : Through Mr. Mansoor Ahmed Shaikh, DPG

Date of hearing : 22.09.2025
Date of order : 06.10.2025

ORDER

KHALID HUSSAIN SHAHANI, J. — The applicant Shoukat Ali Shar, seeks pre-arrest bail in a case bearing Crime No. 157/2025 registered at Police Station Mirwah, District Khairpur, for offences under Sections 324, 337-A(i), 337-A(ii), 337-F(v), 337-L(2), 504, 147 and 148, PPC. His previous bail plea before the learned Additional Sessions Judge-IV, Khairpur, was rejected.

2. The prosecution case, as set forth by the complainant, Bashir Ahmed Shar, in the FIR lodged on 22.05.2025 at 2300 hours, alleges that on the morning of 21.05.2025 the applicant, in concert with co-accused, assaulted the complainant. After initially seeking intervention from local notables, on the way to the police station, the applicant, armed with a brick, along with others wielding lathis and iron rods, intercepted and attacked him. It is specifically alleged that the applicant struck the complainant's face with a brick, causing injuries, while the co-accused inflicted harm upon the complainant's relatives.

3. The learned counsel for the applicant contended that the FIR reflects false implication rooted in prior family enmity. The one-day delay in lodging the FIR was highlighted as unexplained. It was argued that the FIR is a retaliatory counterblast to an earlier FIR No.158/2025 filed by the applicant's side, wherein bail had already been granted to the complainant's party. Given the cross-version nature of the case, parity in bail treatment was urged. Reliance was placed on the principle that the case attracts further inquiry under Section

497(2), Cr.P.C., since prosecution witnesses are closely related and their allegations vague and general. It was further stressed that the applicant possessed no prior criminal record, had cooperated fully with the investigation, and had not abused the interim pre-arrest bail menace. Judgment in 2024 SCMR 1605 was cited.

4. The learned Deputy Prosecutor General opposed bail, underscoring that the applicant is specifically implicated and the injury alleged attracts Section 337-A(iii), PPC, punishable with imprisonment up to ten years, thereby engaging the prohibitory clause of Section 497(1), Cr.P.C. On examining the record, the allegation that the applicant struck the complainant's face with a brick causing a nasal bone fracture, classified as Shajjah-i-Hashimah under Section 337-A(iii), PPC, stands out as serious. The injury's nature invokes the prohibitory clause, ordinarily disentitling the applicant from bail. The prosecution witnesses consistently support the complainant's version. The delay in FIR lodging is sufficiently accounted for by medical treatment pursued before FIR registration. While enmity is acknowledged, it is double-edged and insufficient alone to assume mala fide or false implication without cogent proof. No mala fide motive on the complainant's part has been demonstrated.

5. Before concluding, the Court must assess whether the applicant fulfills the pre-arrest bail conditions laid down by the Supreme Court in *Rana Muhammad Arshad v. Muhammad Rafique* (PLD 2009 SC 427). Those conditions are:

- i) Pre-arrest bail is an *extraordinary relief* granted only in *exceptional circumstances* to protect innocent persons from victimization by abuse of process.
- ii) It cannot serve as a substitute for post-arrest bail.
- iii) The applicant must satisfy Section 497(2), Cr.P.C., by showing reasonable grounds to believe he is not guilty and that further inquiry is warranted.
- iv) The applicant must demonstrate that arrest is sought *mala fide*, for ulterior motives to humiliate and dishonour.

- v) The applicant must have *clean hands*, including no prior criminal record or fugitive status.
- vi) In absence of compelling cause, the applicant must first approach the Court of Sessions before petitioning the High Court.

6. The applicant has not demonstrated any *extraordinary situation* of victimization; compliance with Section 497(2) beyond contesting allegations; *Mala fide* or ulterior motive behind the arrest and that this relief is not being used as a substitute for ordinary bail.

7. Before culminating further facts & merits, it is pertinent to note recent Supreme Court pronouncements refining the pre-arrest bail framework. In *Shahzada Qaiser Arfat alias Qaiser v. The State* (PLD 2021 SC 708), the Court held that while pre-arrest bail remains extraordinary, courts must also protect the accused's fundamental right to liberty by conducting a tentative yet meaningful examination of incriminating material on record, rather than insisting solely on proof of mala fide. Likewise, in *Tanveeruddin Ahmed v. The State* (2023 SCMR 1123), the Court emphasized that an applicant's clean record and full cooperation with investigation are factors to be weighed alongside the nature of allegations and the evidence produced at the bail stage. Applying these principles, the present case reveals: no substantive material has been placed on record to exculpate the applicant at this stage; the serious nature of the injury under Section 337-A(iii), PPC, and consistent eyewitness account underscore sufficient grounds for further inquiry; and no bona fide evidence of police or prosecutorial malice has been shown. Consequently, even under the more balanced approach mandated by recent precedents, the applicant fails to merit pre-arrest bail.

8. Further meticulous examination of record, the allegation that the applicant struck the complainant's face with a brick causing a nasal bone fracture, classified as *Shajjah-i-Hashimah* under Section 337-A(iii) PPC, stands out as serious. The injury's nature and gravity invoke the prohibitory clause,

thus ordinarily disentitling the applicant from bail. The prosecution witnesses have consistently supported the complainant's version. The delay in FIR lodging is sufficiently accounted for by medical treatment pursued before the FIR registration. While the presence of enmity is acknowledged, it is a double-edged factor and insufficient alone to assume mala fide or false implication without cogent proof. No such mala fide motive on the complainant's part has been demonstrated.

9. Further, the decision in *Khizar Hayat v. The State* (2024 SCMR 1605) is readily distinguishable from the present application. In *Khizar Hayat*, the accused belonged to the family that owned the housing society and faced true cross-versions: both sides claimed rightful entry and there was no independent investigation into the passerby's injury, establishing a bona fide case for "further inquiry" under Section 497(2), Cr.P.C.. Here, by contrast, the applicant's alleged assault with a brick causing nasal bone fracture is specifically narrated in the FIR, corroborated by medical evidence and consistent eye-witness accounts. There is no comparable counter-version disputing ownership rights or significant lapses in investigation; nor is there any unexplored injury of a third party. Consequently, unlike *Khizar Hayat*, this case does not present the requisite factual parity or investigatory lacuna that would warrant treating it as one of mere further inquiry.

10. In light of the foregoing, the applicant has failed to satisfy the pre-arrest bail framework. Accordingly, the Criminal Bail Application is dismissed and the interim pre-arrest bail granted on 26.08.2025 is recalled. The observations herein are tentative and shall not prejudice the merits at trial.

J U D G E