

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr Bail Appln. No. S-787 of 2025

Applicant : Haji Muhammad son of Fateh Muhammad,
Through M/s Nusrat Hussain Memon, Advocate

The State : Through Mr. Mansoor Ahmed Shaikh, DPG

Date of hearing : 26.09.2025
Date of order : 26.09.2025

ORDER

KHALID HUSSAIN SHAHANI, J – Applicant Haji Muhammad seeks confirmation of the interim pre-arrest bail granted by this Court on 26th August, 2025 in a case bearing crime No.94 of 2025, for offences under Sections 337-A(i), 337-F(i), 337-A(ii), 506(2), 504, 148 and 149, PPC, registered at Police Station Tando Masti Khan. The Additional Sessions Judge-IV (GBVC), Khairpur had declined bail vide order dated 23.08.2025, prompting the applicant to seek relief from this Bench.

2. The FIR alleges that on 17th June 2025, at about 1600 hours, the applicant, in company with others, attacked the complainant's residence. It is averred that the applicant struck the complainant's minor son on the head with a hatchet, inflicting a grievous injury, while co-accused assaulted the complainant and threatened further violence. The injured youth was treated at Civil Hospital Khairpur before formal registration of the case.

3. Learned counsel for the applicant submitted that the injury sustained by the son, though serious, amounted to *Shajjah-i-Mudihah* and did not invoke the non-bailable prohibition of Section 497(1), Cr.P.C. It was argued that the bulk of the offences are bailable in

nature, and the applicant's clean record and absence of any flight risk weighed heavily in favour of bail. Learned counsel further contended that the dispute arises from prior family litigation and compromise, giving rise to genuine cross-versions, which under established precedents require further inquiry rather than outright refusal of bail. He emphasized that refusal of bail can never be a substitute for pre-trial punishment and that the question of aggressor versus aggrieved must await a full-dressed trial.

4. The Additional Prosecutor General, however, argued that the hatchet attack on a minor amounted to grievous hurt deserving of strict bail scrutiny. He submitted there was no counter-version specific to this incident on the record and that the Sessions Court's finding of *prima facie* evidence remained intact.

5. Upon careful consideration, this Court finds that the offence charged does not fall squarely within the non-bailable clause of Section 497(1), Cr.P.C., as the injury qualifies as *Shajjah-i-Mudihah* 337-A(ii) PPC and is punishable up to five years. Supreme Court authority in *Shahzada Qaiser Arfat v. The State* (PLD 2021 SC 708) held that where factual disputes exist and the offence is not non-bailable, pre-arrest bail should ordinarily be granted following a tentative assessment of the material on record. In *Tanveeruddin Ahmed v. The State* (2023 SCMR 1123), it was reaffirmed that grievous hurt not attracting ten-year imprisonment remains bailable and that genuine cross-versions coupled with investigatory lacunae warrant bail as a rule. Furthermore, in *Khizar Hayat v. The State* (2024 SCMR 1605), the Court

distinguished offences requiring mandatory non-bailable treatment from those demanding further inquiry where family disputes and lack of independent investigation raised bona fide questions of aggression. Earlier precedents in *Fazal Muhammad v. The State* (1976 SCMR 391) and *Shafiqan v. The State* (1972 SCMR 682) also establish that in true cross-version cases refusal of bail is the exception, and the ultimate determination of aggressor versus aggrieved must await trial.

6. In the present case, there is a genuine contestation of facts and no evidence of mala fide prosecution or risk of abscondence. The Sessions Court's refusal to grant bail on prima facie material is insufficient to override the applicant's right to liberty where the statutory bar does not apply and where further inquiry is plainly required.

7. Accordingly, the instant bail application is allowed and the interim bail order is confirmed under same terms and conditions, shall cooperate fully with the investigation, abstain from influencing witnesses, and attend all trial proceedings. These conditions shall remain in force until final adjudication on the merits. This confirmation does not prejudice the prosecution's case and is not an expression on the applicant's guilt or innocence, which shall be determined after full-dressed trial.

J U D G E