

# IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Application No. S-211 of 2025

Applicants : 1. Zahid Hussain @ Zahid s/o Fakir Muhammad  
2. Ali Asghar @ Asghar s/o Muhammad Jumman  
3. Waseem Ali @ Waseem s/o Ghulam Asghar  
Through Mr. Haji Abdul Karim G. Luhrani,  
Advocate

Complainant : Ghulam Shabbir Mashori  
Through Mr. Zulfiqar Ali Panhwar, Advocate

The State : Through Mr. Muhammad Raza Katohar, Deputy  
Prosecutor General

Date of Hearing : 01.09.2025  
Date of order : 18.09.2025

## **ORDER**

**KHALID HUSSAIN SHAHANI, J.** The applicants Zahid Hussain @ Zahid, Ali Asghar @ Asghar, and Waseem Ali @ Waseem, seek post-arrest bail in a case bearing crime No.64 of 2024, involving offences under Sections 302, 337-H(ii), 109, 114, 148, and 149 PPC, registered at Police Station Mithiani, District Naushahro Feroze,. The applicants had earlier applied for bail before the learned 1st Additional Sessions Judge/MCTC, Naushahro Feroze, but their pleas were declined vide order dated 13.02.2025.

2. The narrative presented in the FIR, lodged by complainant Ghulam Shabbir Mashori, details a grievous incident stemming from matrimonial discord. The deceased Muhammad Ramzan had divorced his wife, Mst. Hafeezan, which allegedly incited animosity among her brothers and paternal uncles. Mst. Hafeezan is said to have instigated her male relatives, including the accused persons, to avenge the divorce. On 09.09.2024, at about 9:30 a.m., at the top of Sehra Minor near the workshop of accused Jurial Mashori, several accused persons were present including Asghar armed with a pistol, Jurial and Arshad with repeaters, Waseem with a gun, and Zahid, unarmed. It is alleged

that on the instigation of Zahid and Asghar, co-accused Arshad fired a shot from a repeater, striking Muhammad Ramzan on the head, followed by Jurial firing a shot at the deceased's back. The victim fell into the adjacent minor canal and was later taken to Mithiani Hospital, where he succumbed to injuries. The accused then fled the scene after firing sporadically in the air. The FIR was subsequently registered.

3. The learned counsel vehemently asserts that applicants are innocent and have been falsely implicated due to ongoing matrimonial disputes, a fact that is reflected in the circumstances surrounding the FIR itself. In particular, he highlights a significant unexplained delay of about nine and a half hours in lodging the FIR, which indicates prior deliberation and consultation by the complainant party. Counsel points out that the actual fatal injuries were caused by co-accused Arshad and Jurial, while the present applicants are accused merely of instigating and aerial firing. Any vicarious liability remains a matter to be determined after proper trial and evidence. Counsel further draws attention to the fact that co-accused Mst. Hafeezan, who was allegedly involved in abetment, has already been enlarged on pre-arrest bail by this Court, underscoring the principle of consistency in bail jurisprudence. The applicants have already been held in custody since their arrest and are no more required for further investigation. Reliance is placed on authoritative case law including 2020 SCMR 451, 2023 P.Cr.L.J Note 21, and 2023 P.Cr.L.J 323.

4. On the other hand, the learned Deputy Prosecutor General strongly opposes bail, contending that the principle of consistency is inapplicable as co-accused Mst. Hafeezan was not present at the scene, whereas the applicants were physically present and actively involved in instigation and firing. The prosecution presents evidence of recovery of emptied cartridges from the crime scene that match the pistol recovered from co-accused Asghar pursuant to his

pointation on 05.10.2024. The FSL report confirms the match of these empties and the repeater recovered from co-accused Jurial, lending forensic weight to the prosecution's case.

5. Similarly, the complainant's counsel opposes the bail application, emphasizing that the applicants are explicitly named in the FIR and are liable as members of an unlawful assembly with a common intention, invoking vicarious criminal responsibility. He stresses that the offence is grave and falls under the prohibitory clause of Section 497 of the Criminal Procedure Code, which restricts bail as a rule in offences punishable with death. The counsel further brings to the Court's notice that before his death, Muhammad Ramzan filed a Cr. Misc. Application before Justice of Peace expressing apprehension of threat to his life by the accused, connecting the accused to the intent and design of the murder. Therefore, he pressed for dismissal of the bail plea.

6. In a thorough examination of the record, it is discernible that while the applicants have been named in the FIR, no injury was directly attributed to shots allegedly fired by them. The criminal narrative predominantly accuses them of instigation and aerial firing, not the fatal shooting. The principles of criminal liability for vicarious acts under Section 149 PPC will be scrutinized during trial after substantive evidence is recorded, and it would be inappropriate to pre-judge their culpability at this stage.

7. The unexplained delay of nearly ten hours in lodging the FIR raises significant concerns regarding the immediacy and reliability of the prosecution's case. Delays may often afford an opportunity for concoction or influence, especially in cases marked by apparent enmity and matrimonial discord, as acknowledged in this matter. Such a delay therefore invites closer judicial inquiry, making the case suitable for exercise of caution under Section

497(2) Cr.P.C., which envisions bail in cases where the court requires further inquiry.

8. The fact that co-accused Mst. Hafeezan was already granted pre-arrest bail on charges of facilitation and abetment further strengthens the applicants' case on the doctrine of consistency, as their alleged role is similar in nature, involving instigation rather than direct commission of the homicide.

As to the recovery of empties and firearms, it is acknowledged that while these lend credence to the occurrence of a serious offence, they do not, in themselves, conclusively establish the specific participation or individual culpability of the applicants, particularly when attribution of fatal injuries lies primarily on others. The admitted existence of enmity arising from the matrimonial dispute provides both motive and possibility of false implication. Given that the applicants are already in custody, the investigation is complete and the challan filed, with no further custodial requirements apparent, these factors collectively render the case one of further inquiry rather than one demanding outright denial of bail.

9. In these circumstances, balancing the rights of the accused against the interests of justice, this Court finds that the applicants have made out a rational and legally sustainable case for post-arrest bail. Consequently, the application is allowed subject to the applicants furnishing solvent surety bonds in the amount of Rs.500,000 (Rupees Five Hundred Thousand) each along with P.R. bonds of the like amount to the satisfaction of the trial Court.

10. It is expressly clarified that the observations made herein are tentative and shall not prejudice the trial Court in making a final determination on the merits of the case after trial.

**J U D G E**