

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Dr. Syed Fiaz ul Hassan Shah

Criminal Bail Application No.1895 of 2025

Applicant : 1. Maqbool Soomro actual name
Maqbool S/o Muhammad Juman
2. Ali Mir S/o Muhammad Bux
through Syed Yasir Ali Shah,
Advocate

Complainant : Muhammad Siddique S/o Haroon
through Mr. Sarfaraz Sarwar Khatti,
Advocate

Respondent : The State
through Mr. Muhammad Noonari, DPG

Date of hearing : 30.09.2025

Date of order : 30.09.2025

ORDER

Dr. Syed Fiaz Ul Hassan Shah, J. - Through this Bail Application, applicants/accused seek pre-arrest bail in Crime No.69/2025 for offence under Sections 506/2, 337-A(i), F(i), 504, 34 PPC registered at PS Darro. His bail plea has been declined by the learned 1st Addl. Sessions Judge, Sujawal Trial Court] vide order dated 10.07.2025.

2. The facts are incorporated in the FIR and impugned and do not need to be reproduced for the purposes of deciding the bail application.

3. Learned counsel for the applicant contends that the applicants and complainant are relatives and due to dispute over the agriculture land, the said incident had taken place; that the FIR is delayed about 24 days for which no plausible explanation has been furnished by the complainant; that the offence does not fall within prohibitory clause. He lastly states that the challan has been submitted before the trial Court.

4. On the other hand, learned counsel for the complainant strongly opposes for grant of bail and states that the applicants are issuing threats to kill and have encroached the land of the

complainant and ridicule before the mohalla people. Learned DPG candidly states that as per medical record, the complainant victim sustained the injuries as Shujah-e-Khafifa which is bailable offence.

5. I have heard the learned counsel for the parties and with their able assistance perused the record.

6. I have considered the contention of learned counsel for the applicant that there is considerable delay of 24 days in registration of the FIR and the complainant has stated that earlier this case was not registered by the police; therefore, he has approached the Justice of Peace for seeking redressal of his grievance. Further, the offence in which the applicants have been charged does not fall within the prohibitory clause and in such cases, grant of bail is a right and refusal is exception. Learned DPG also confirmed that the injuries sustained by the complainant party have been declared as Shujah-e-Khafifa which is bailable offence.

7. The doctrine of rule of consistency or equal treatment, traditionally applied by courts in cases of post-arrest bail, has now been authoritatively extended to pre-arrest bail jurisprudence. The Hon'ble Supreme Court of Pakistan, in its judgment ***Jamaluddin Rabail v. The State (Criminal Petitions No. 41-K & 42-K of 2023)***, has laid down the principle that the doctrine of consistency is equally applicable in cases involving pre-arrest bail. The relevant portion of the judgment is instructive and delineates that although the considerations for grant of pre-arrest and post-arrest bail are generally distinct, where the role ascribed to both Applicant is identical, the denial of relief to one on the basis of procedural distinction would be illusory. It was observed that if the Applicant enjoying ad interim pre-arrest bail is denied relief solely on the ground that pre-arrest bail entails different considerations, while the co-accused is granted post-arrest bail on merits, then upon arrest, the petitioner would immediately become entitled to post-arrest bail on the plea of consistency. Such a situation would render the distinction academic and defeat the principle of equal treatment. Reliance is placed on the following precedents:

- *Muhammad Ramzan v. Zafarullah (1986 SCMR 1380)*
- *Kazim Ali and others v. The State and others (2021 SCMR 2086)*

- *Muhammad Kashif Iqbal v. The State and another* (2022 SCMR 821)
- *Javed Iqbal v. The State through Prosecutor General of Punjab and another* (2022 SCMR 1424)

8. Furthermore, the principles governing the grant of pre-arrest bail have been elaborated by the Hon'ble Supreme Court in ***Rana Muhammad Arshad v. Muhammad Rafique and another* (PLD 2009 SC 427)**, wherein it was held that such relief should be confined to cases where a good prima facie case is made out in respect of the alleged offence; the denial of bail would result from some ulterior motive aimed at injuring the applicant; or the applicant would suffer irreparable harm if bail is refused.

9. The jurisprudence governing the grant of bail is fundamentally anchored in the principle of reasonableness, requiring a tentative assessment of each case on its own merits and factual matrix. This assessment is not merely procedural but is informed by the broader analogy that, should the accused ultimately be acquitted after prolonged trial proceedings, the criminal justice system does not provide any statutory mechanism for reparation or compensation for the extended period of incarceration endured under unproven charges. It is, therefore, legally and morally untenable to keep an accused person incarcerated indefinitely while awaiting the conclusion of trial, especially when such proceedings may culminate either in conviction or acquittal. In the latter scenario, the absence of statutory remedies for wrongful or prolonged detention underscores the necessity of bail as the only viable safeguard against irreparable harm. This principle has been consistently recognized and developed by the Superior Courts of Pakistan, which have emphasized the doctrine of *tentative assessment*—a judicial tool that enables courts to evaluate the sufficiency of material available at the bail stage without delving into conclusive findings. Each case must be assessed independently, with due regard to its peculiar facts and circumstances. In the present matter, upon conducting such tentative assessment and examining the statutory framework, it is evident that the case does not fall within the prohibitory clause of Section 497 of the Criminal Procedure Code. Accordingly, the considerations for grant of bail remain governed by the settled principles of law and judicial discretion.

10. In view of the foregoing, the present case squarely falls within the parameters laid down by the Hon'ble Supreme Court. Accordingly, the applicants are granted and confirmed the concession of pre-arrest bail on the same terms and conditions, including surety and personal recognizance bond, as were imposed while granting interim pre-arrest bail vide Order dated 22.07.2025. However, it may be observed that in case the applicants intimidate or harass the complainant or any prosecution witness, the complainant shall be at liberty to move application for cancellation of bail.

11. It is clarified that the observations made hereinabove are tentative in nature and shall not prejudice the trial Court, which shall decide the case strictly on its merits and in accordance with law.

JUDGE

Kamran/PS