

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc. Appln. No. S-512 of 2025

Applicant : Irshad Ali s/o Muhammad Pannah, Rahoojo
Through Mr. Noor Hassan Malik, Advocate

Respondent No.3 : Munawar Ali s/o Gul Muhammad, Rahoojo
Through Mr. Muhammad Qayyum Arai, Advocate

The State : Through Mr. Muhammad Raza Katohar, DPG

Date of hearing : 20.11.2025
Date of Order : 27.11.2025

ORDER

KHALID HUSSAIN SHAHANI, J.— Applicant Irshad Ali has invoked inherent jurisdiction of this court calling in question order dated 11th August, 2025, passed by the Learned Judicial Magistrate, Pir Jo Goth and so also challenge the issuance of Non-Bailable Warrants (NBWs) against himself and five co-accused.

2. The factual matrix of this case is that on the 16th day of April, 2025, at about 1700 hours, an incident occurred near Zeeshan Pump in the remits of Police Station Pir Jo Goth, Taluka Kingri, District Khairpur, wherein two individuals were killed by gunshot wounds. The complainant, Munwar Ali Rahoojo, lodged a FIR with the police alleging that he was proceeding on a motorcycle along with his companions towards their village when they encountered about fourteen armed persons at Link Road near banana crops. According to the complainant's account, the armed assailants opened indiscriminate fire, resulting in the deaths of the complainant's brothers, Muhammad Anees and Amjad Ali. The complainant identified the accused as thirteen named persons and one unidentified person. The named accused included Rizwan, Zubair, Salman alias Saloo, Hadi Bux alias Aadho, Noman, Ajeeb, Zahid, Toheed, Irshad (Applicant), Arbab, Azad, Mahtab, and Hatim.

3. Accordingly, FIR bearing No.38 of 2025 was registered at Police Station Pir Jo Goth for offences under Sections 302, 337-H(ii), 114, 148, and 149 PPC, alleging murder, causing hurt, abetment, rioting, and acts done by several

persons in furtherance of common intention. The Investigating Officer commenced investigation and conducted a comprehensive inquiry spanning several months. During the course of investigation, the Investigating Officer examined witnesses, recorded statements, investigated the scene of the incident, and conducted inquiries with various police officials including the Station House Officer and Head Constables posted at Police Station Pir Jo Goth. The applicant Irshad Ali, is a serving Police Constable with Service Number PC/2374, posted at Police Station Pir Jo Goth. At the time of the alleged incident on 16th April, 2025, at 17:00 hours, the applicant was assigned and performing Line Watch (sentry) duty at the Police Station itself. The official Roznamcha (daily register) of Police Station Pir Jo Goth, specifically Register No. 02, contains entries clearly documenting that the applicant commenced duty at 14:00 hours and continued duty until 18:00 hours, thereby encompassing the precise time of the alleged incident. The applicant remained at the Police Station throughout this period and did not leave his duty post.

4. Upon completion of the investigation, the Investigating Officer submitted the Final Investigation Report (Challan) under Section 173 of the Criminal Procedure Code. In this Final Challan, the Investigating Officer placed the names of six accused persons, including the applicant and five others, in Column No. 2, indicating that sufficient evidence had not been found against them to warrant charging them with the offence. The names placed in Column No. 2 were Irshad Ali, Salman alias Saloo, Hadi Bux alias Aadho, Arbab, Azaad alias Azam, and Mehtab. However, upon receipt of the Final Investigation Report, the Learned Judicial Magistrate, Pir Jo Goth, passed an Order dated 11th August, 2025, exercising her discretion to join these six accused persons for trial proceedings despite their placement in Column No.2. The Learned Magistrate issued Non-Bailable Warrants against the applicant and the co-accused, directing them to surrender themselves to the custody of the police and to join the trial.

5. The Learned Advocate for applicant submitted that the issuance of Non-Bailable Warrants is a severe measure that should be reserved for circumstances wherein the accused is a history-sheeter, has a propensity to abscond, is a proclaimed offender, or poses a significant flight risk. The Learned Advocate emphasized that the issuance of Non-Bailable Warrants at the commencement of trial against a person who holds a government position as a Police Constable, who is formally employed at a fixed location, and who has every reason to comply with Court orders, is disproportionate and unjust. The Learned Advocate further submitted that the purpose of a warrant is to compel the attendance of the accused before the Court, and this purpose can be achieved through the issuance of Bailable Warrants coupled with cash deposits or personal bonds. The Learned Advocate argued that there is no evidence on record suggesting that the applicant poses a flight risk or that he is likely to abscond. In fact, the applicant has consistently remained at his duty post and has not attempted to evade the police authorities. The Learned Advocate submitted that by issuing NBWs, the Learned Magistrate has, in effect, assumed the guilt of the applicant before trial has even commenced, thereby violating the fundamental principle that every person is presumed innocent until proven guilty beyond reasonable doubt. The Learned Advocate further submitted that the issuance of NBWs creates a procedural impediment to a fair trial. Once an NBW is issued, the Applicant becomes a proclaimed offender in the eyes of the criminal justice system. The Applicant cannot freely appear before the Court; he must either surrender to police custody or remain in hiding. This situation prevents the Applicant from fully participating in his own defence and from being present during crucial stages of the trial. The Learned Advocate argued that this procedural arrangement is fundamentally unjust and violates the principles of natural justice and due process enshrined in the Constitution of the Islamic Republic of Pakistan, 1973. The Learned Advocate emphasized that Article 4 of the Constitution guarantees to every person the right to a fair trial, and that a trial

conducted without the full and voluntary participation of the accused cannot be deemed fair. The Learned Advocate further contended that the Applicant's placement in Column No. 2 of the Final Challan by the Investigating Officer creates a presumption, albeit not conclusive, that the Investigating Officer did not consider the evidence against the Applicant to be sufficient to warrant prosecution. Whilst the Learned Magistrate possesses discretion to join the Applicant for trial, the exercise of this discretion to issue NBWs, when the evidence is admittedly insufficient according to the investigating officer, demonstrates a disproportionate exercise of the Court's powers. The Learned Advocate submitted that a more measured approach would be to issue Bailable Warrants to permit the Applicant to join the trial and to place his defence before the Court, allowing the trial process itself to determine whether the allegations are substantiated.

6. The Learned Deputy Prosecutor General, appearing on behalf of the State, whilst defending the Learned Magistrate's Order, has submitted that once the Magistrate has decided to take cognizance of the case and to join the accused for trial, it is within the Magistrate's discretion to determine the nature of the warrant to be issued. The Learned DPG submitted that the seriousness of the offence (murder, resulting in two deaths) justifies the issuance of Non-Bailable Warrants to ensure the attendance of the accused before the Court. The Learned DPG contended that the issuance of NBWs is a standard practice in cases involving grave offences such as murder, and that permitting the accused to remain on bail at this stage might encourage absconding or tampering with evidence. The Learned DPG further submitted that the applicant's status as a Police Constable does not preclude the issuance of Non-Bailable Warrants, as police officials can also be accused of criminal offences and can potentially abuse their position to evade the law. The Learned DPG argued that the issuance of NBWs is not an assumption of guilt but merely a procedural measure to ensure the attendance of the accused at trial. The Learned DPG contended that the

Applicant remains free to surrender to the police authorities at any time and to join the trial, at which point his guilt or innocence can be determined through the trial process. The Learned DPG submitted that the restriction imposed by NBWs is a temporary measure only during the period of evasion, and that once the Applicant surrenders, the matter proceeds to trial in the normal course.

7. This Court, after careful consideration of the arguments advanced by both parties and the principles of criminal law and procedure, must now examine the question of whether the issuance of Non-Bailable Warrants is legally justified in the circumstances of this case, or whether the matter warrants the substitution of Bailable Warrants to ensure a fair and just trial process.

8. The law is well settled that a warrant is a formal command issued by the Court directing the police to compel the attendance of an accused person before the Court. Section 70 of the Criminal Procedure Code defines a warrant as a written order, issued in the name of the State, directing that a certain person shall be forthwith arrested and brought before the Court or any other person therein named. The Procedure Code recognizes two categories of warrants: Bailable Warrants (issued where the accused is entitled to be released on bail as a matter of right) and Non-Bailable Warrants (issued where the accused is not entitled to bail as a matter of right). The distinction between these two categories is not merely procedural but reflects fundamental differences in the legal presumptions and procedural safeguards applicable to the accused. The issuance of a Non-Bailable Warrant is a serious measure that operates to convert the accused into a proclaimed offender for the purpose of compelling his attendance before the Court. The issuance of NBWs signifies that the Court has *prima facie* formed an opinion that the accused is likely to abscond or evade the process of the Court, and that therefore the ordinary processes of the Court are insufficient to ensure his attendance. The issuance of NBWs also carries collateral consequences, as a person against whom NBWs have been issued loses the

presumption of innocence in a procedural sense and is subjected to arrest and police custody. These consequences are severe and operate to place the accused in a precarious legal position even before trial has commenced.

9. The Supreme Court has consistently held that the power to issue Non-Bailable Warrants must be exercised with caution and only in circumstances where there exists a reasonable apprehension of absconding or where the accused has demonstrated a propensity to evade the process of the Court. The Supreme Court has held that merely because the offence is grave or heinous does not automatically justify the issuance of NBWs. The Court must examine the specific circumstances of each case, including the status of the accused, his roots in the community, his employment and family ties, his history of compliance with legal processes, and any specific indications suggesting a flight risk. Applying these principles to the present case, this Court observes that the Applicant is a serving Police Constable with formal government employment at a fixed location. The Applicant has not been shown to be a history-sheeter or a person with a propensity to evade the law. The Applicant has been stationed at Police Station Pir Jo Goth and has continued to perform his duties without attempting to flee or evade the authorities. There is no evidence on record suggesting that the Applicant has made any attempt to abscond or to evade the process of the Court. The applicant's employment as a Police Constable provides a clear and verifiable address, making him easily traceable and accessible to the Court. The Applicant has strong community and familial ties in the jurisdiction and has no apparent reason to flee.

10. Furthermore, the circumstances of this case are distinguishable from typical cases in which Non-Bailable Warrants are issued. In cases involving organized crime, gang violence, or crimes of professional offenders, the issuance of NBWs is justified as a precaution against organized absconding or destruction of evidence. However, the present case, on the facts before this Court, does not

fall into such a category. The Applicant's placement in Column No. 2 of the Final Challan suggests that the Investigating Officer has examined the evidence and concluded that it is insufficient to warrant prosecution. Whilst the Magistrate possesses the discretion to overrule this finding, the placement in Column No.2 creates a presumption that the evidence is weak or circumstantial. In such circumstances, the issuance of Non-Bailable Warrants appears disproportionate to the strength of the prosecution's case. Moreover, the issuance of NBWs at the stage when the trial is just commencing creates a procedural obstacle to a fair trial. Once an NBW is issued, the applicant becomes a proclaimed offender in the system. If the applicant does not surrender, he remains in hiding and cannot participate in the trial. If the applicant does surrender, he surrenders into police custody, and the trial then commences with the applicant having been subjected to arrest and the stigma attached thereto. This procedural arrangement is disadvantageous to the accused and operates to deprive him of the fundamental presumption of innocence.

11. The Supreme Court has held that whilst the Court possesses discretion to issue NBWs, this discretion must be exercised reasonably and in a manner that is consistent with the principles of natural justice and the fair trial guarantees enshrined in the Constitution. The Court has also held that in borderline cases, where the evidence is not overwhelming or where the flight risk is not apparent, the Court should prefer the issuance of Bailable Warrants coupled with appropriate conditions, such as reporting requirements, cash deposits, or sureties, to ensure the attendance of the accused whilst preserving the presumption of innocence. This Court is of the view that the circumstances of the present case warrant a reconsideration of the warrant regime. Whilst this Court does not seek to interfere with the Learned Magistrate's decision to take cognizance of the case and to proceed with trial, the issuance of Non-Bailable Warrants appears to be a disproportionate response to the circumstances. The applicant, being a serving Police Constable with a fixed place of employment and

with no history of absconding or evasion, can reasonably be compelled to attend trial through the issuance of Bailable Warrants coupled with appropriate conditions.

12. Furthermore, this Court is cognizant of the important purpose served by permitting accused persons to join trial proceedings on bail. The accused has the fundamental right to be present during his trial, to hear the evidence against him, to cross-examine witnesses, and to place his defence before the Court. If the applicant is forced to remain in hiding or in police custody as a result of NBWs, he is denied these fundamental rights. The trial process itself becomes compromised, as the accused cannot fully participate in his own defence. This situation operates to undermine the integrity of the trial process and to cast doubt upon the fairness of the eventual verdict. This Court is further mindful of the public interest in ensuring that criminal trials are conducted fairly and expeditiously. If the applicant is forced to remain in hiding, the trial cannot commence in his presence, and the matter is unnecessarily protracted. If, on the other hand, the applicant is permitted to join the trial on bail through the issuance of Bailable Warrants, he can appear before the Court, and the trial can proceed in an orderly and expeditious manner. The issuance of Bailable Warrants thus serves the interests of both the accused and the public. Moreover, this Court notes that the issuance of Bailable Warrants does not eliminate the accountability measures available to the Court to ensure the attendance and cooperation of the Applicant. The Court can impose conditions such as reporting to the police station on specified dates, furnishing of sureties or personal bonds, and restrictions on the applicant's movements if necessary. These conditions, whilst less severe than NBWs, are sufficient to compel the Applicant's attendance and cooperation with the trial process. This Court is also cognizant of the fact that the Applicant has placed before this Court evidence suggesting that he was not present at the scene of the alleged crime at the time of the incident. The applicant has produced the official *roznamcha* entries, statements of police officials, and an inquiry report

from the Sub-Divisional Police Officer, all corroborating that the Applicant was performing duty at the Police Station at the time of the alleged incident. Whilst this evidence may not be conclusive and may be subject to examination during trial, the fact that the Applicant possesses what appears to be substantial evidence of alibi reinforces the view that the issuance of Non-Bailable Warrants is disproportionate at this stage.

13. The applicant should be afforded the opportunity to join the trial proceedings and to place this evidence before the Court. The trial process itself will determine whether the alibi is genuine or fabricated, whether the Applicant's presence at the Police Station is corroborated, and whether the accusations against him are substantiated. This is the proper function of the trial process. However, if the Applicant is forced to remain in hiding due to NBWs, he cannot place his alibi evidence before the Court, and the trial cannot serve its proper function. The issuance of Bailable Warrants would permit the Applicant to join the trial and would thus serve the interests of justice. This Court must emphasize that its decision to modify the warrant regime should not be construed as any comment upon the merits of the case or as suggesting that the Applicant is innocent. The question of guilt or innocence is a matter to be determined through the trial process. This Court's decision is based solely upon the procedural question of whether Non-Bailable Warrants are the appropriate instrument to compel the Applicant's attendance at trial, given the specific circumstances of his case.

14. After careful deliberation and in light of the principles discussed above, this Court is of the view that justice would be better served by modifying the warrant regime to permit the Applicant to join the trial on bail through the issuance of Bailable Warrants. This modification will allow the trial to proceed in an orderly and expeditious manner, will permit the Applicant to place his defence before the Court, and will preserve the fairness of the trial process. The

modification will not prejudice the prosecution or the interests of justice, as the Applicant remains duty-bound to appear before the Court and to comply with all orders passed by the Trial Court.

15. Accordingly, this Court hereby modifies the impugned Order dated 11th August, 2025, passed by the Learned Judicial Magistrate, Pir Jo Goth, to the extent of the warrant regime applicable to the Applicant and the five co-accused (Salman alias Saloo son of Fareed, Hadi Bux alias Aadho son of Wazeer, Arbab son of Muhammad Safar, Azaad alias Azam son of Muhammad Safar, and Mehtab son of Janib). The Non-Bailable Warrants previously issued against these six accused persons are hereby cancelled and withdrawn. In lieu thereof, Bailable Warrants are hereby issued directing these six accused persons to appear before the Learned Judicial Magistrate, Pir Jo Goth, on the date fixed for the commencement of the trial proceedings. The six accused persons shall be at liberty to join the trial proceedings upon furnishing personal bonds in such amounts as may be determined by the Trial Court, or alternatively upon furnishing of cash deposits or sureties as deemed appropriate. The Trial Court shall have the discretion to impose additional conditions as necessary, including restrictions on movements, regular reporting to the police station, or any other conditions deemed fit to ensure the attendance and cooperation of the accused during the trial. However, the said conditions shall not include arrest or police custody unless and until the accused fails to comply with the orders of the Court or attempts to abscond or tamper with evidence.

16. The Learned Trial Court is hereby directed to proceed with the trial expeditiously in accordance with the provisions of the Criminal Procedure Code and to complete the trial within a reasonable period. The issuance of Bailable Warrants in lieu of Non-Bailable Warrants will permit the trial to proceed in the presence of all accused persons, thereby ensuring a fair and comprehensive examination of the evidence and allowing the accused to cross-examine

prosecution witnesses and to place their defence before the Court. The trial process itself will determine whether the allegations against the accused are substantiated and whether the Applicant's alibi evidence is genuine or fabricated. This Court further directs that this order be communicated to the Learned Judicial Magistrate, Pir Jo Goth, without delay, and that appropriate modified warrants be issued in conformity with the directions contained herein. The Learned Magistrate requires to fix an early date for the commencement of trial proceedings so that the matter can be expeditiously resolved and the accused can either be convicted or acquitted on the basis of a comprehensive examination of the evidence.

17. The Criminal Miscellaneous Application is hereby disposed of in the manner described above.

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