

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S-500 of 2025

Applicant : Abdul Ghaffar son of Muhammad Ameen, Chachar
Through Mr. Qurban Ali Malano, Advocate

Complainant : Muhammad Azeem s/o Wazeer Ali @ Pakhi, Chachar
Through Mr. Muhammad Iqbal Memon, Advocate

The State : Through Mr. Muhammad Raza Katohar, DPG

Dated of Hearing : 27.11.2025

Dated of order : 05.12.2025

ORDER

KHALID HUSSAIN SHAHANI, J.— This Court is pleased to entertain instant bail application filed u/s 497 Cr.P.C on behalf of applicant Abdul Ghaffar Chachar in a criminal case bearing crime No.09/2018, for offences u/s 302, 324, 114, 337-F(i), 148 & 149 PPC registered at PS Katcho Bindi-I, District Ghotki. Previously bail of accused was dismissed vide order dated 04.06.2025. Hence this bail application.

2. As per prosecution theory, on 29th March, 2018, at about 03:30 PM, the complainant Muhammad Azeem was present with his father Wazeer alias Pakhi (aged about 65 years), his brother Peeral, and cousin Ghulam Qadir near their land situated at Kari Dhandh in Deh Katcho Miranipur, when a group of armed individuals arrived at the spot. The alleged assailants, including the present applicant Abdul Ghaffar, were said to be armed with *lathis* and *danda* (wooden sticks). According to the prosecution narrative, accused Abdul Rasool instigated the other accused to "teach them a lesson," whereupon accused Rehmatullah allegedly caught hold of the father's arms, while applicant Abdul Ghaffar and co-accused Atta Muhammad allegedly inflicted *danda* blows to the father (deceased) on his head, nose, and ear. The complainant alleged that he and other witnesses sustained *lathi* injuries on various parts of their bodies. The injured were shifted to Taluka Hospital Ghotki, from where the deceased (Wazeer alias Pakhi) was referred to Civil Hospital Sukkur and subsequently to Chandika Hospital Larkana, where he succumbed to his injuries on 03rd April, 2018. The postmortem was conducted on 04th April, 2018. Following the burial and funeral ceremony, the complainant lodged the FIR on 04th April, 2018. After investigation by the police, the case was challaned before the competent Court of law with the applicant shown as an absconder. Subsequently, upon his return from abroad (Saudi Arabia) and arrest, the applicant was remanded to District Jail Ghotki.

3. In an earlier trial of the same FIR, co-accused Aijaz Ahmed @ Aijaz, Abdul Wahid @ Wahid Bux, Liaquat Ali, Rehmatullah, and Abdul Rasool were tried and acquitted by the learned Trial Court vide judgment dated 26th March, 2022, on the grounds that the prosecution evidence was fraught with serious infirmities, contradictions, and material omissions rendering it unsafe to convict on a capital charge. The applicant filed a bail application before the learned Additional Sessions Judge-I/MCTC, Ghotki(Trial Court), which was dismissed vide order dated 04th June, 2025, primarily on the ground that the applicant was a fugitive for about seven years and that his alleged role in causing head injuries to the deceased was attributable specifically to him and the absconding accused Atta Muhammad.

4. Learned counsel for the applicant advanced his arguments that the applicant is innocent and falsely implicated due to personal animosity arising from a land dispute. Critical to this application, it is submitted that there exists a fundamental and irreconcilable conflict between the ocular (eyewitness) version and the medical evidence on record. The Medico-Legal Certificate and postmortem report reveal that the deceased sustained only minor injuries i.e. one swelling on left parietal bone measuring 5 cm x 4 cm and one abrasion on right parietal bone measuring 1½ cm x ½ cm, these injuries are superficial in nature and, according to the medical officer's own findings, are insufficient to cause death in the ordinary course of life. The postmortem report explicitly states that the doctor kept his opinion "reserved" at the time of examination on 04th April, 2018 (five days after the incident). Subsequently, when chemical and histopathological reports returned negative (showing no pathological changes and no toxins), the doctor retrospectively opined that Injury No. 1 (the swelling) was the cause of death without producing any radiological evidence (MRI or CT scan) to substantiate this conclusion. The applicant submits that the ocular evidence alleges that both accused Abdul Ghaffar and Atta Muhammad inflicted head injuries, yet the medical evidence is silent on which specific injury (if any) was fatal. This creates reasonable doubt as to whether the injuries sustained by the deceased were, in fact, the cause of death or whether death resulted from some other cause not attributable to the alleged incident; in the earlier trial (judgment dated 26th March, 2022), co-accused Aijaz Ahmed and four others were acquitted by the learned Trial Court on the ground that the prosecution evidence was doubtful and fraught with serious infirmities; the learned Trial Court explicitly noted that only the testimony of the injured complainant, without corroborating

evidence of unimpeachable character, cannot be relied upon safely for conviction on a capital charge; the applicant submits that the same prosecution witnesses (complainant, Peeral, and Ghulam Qadir), the same medical evidence, the same FIR, and the same alleged incident form the basis for both the acquittal of co-accused and the charge against the applicant. If the evidence was insufficient to convict co-accused, then by the principle of consistency and the golden rule that benefit of doubt goes to the accused, the same infirmities should benefit the present applicant. The Trial Court judgment documented fifteen (15) material inconsistencies and infirmities in the prosecution case; the applicant has been in jail since March 2024, a period of about twenty (20) months; that nothing was recovered from the possession of the applicant at the time of his arrest. No weapon was recovered; no evidence linking him directly to the alleged crime was found. The charge rests entirely upon the testimony of interested witnesses. Whilst the applicant was initially an absconder, absconding alone is not a sufficient ground to refuse bail when other evidentiary doubts arise that favor the accused. The Supreme Court of Pakistan has held that absconding is merely one of several factors to be considered, and where the case merits further inquiry due to evidentiary infirmities, bail should not be withheld solely on the basis of prior abscondence. He relied upon the case of *Gul Nawab v. The State & another* (2022 SCMR 547) in which the Supreme Court held “*Mere absconsion cannot be a ground to discard the relief sought for as it is established principle of law that disappearance of a person after the occurrence is natural, if he is involved in a murder case, rightly or wrongly--- Mere absconsion is not a proof of guilt, hence, cannot be made sole ground to discard the relief sought for.*” He also placed reliance on the cases of *Saeed Yousif v. The State*, (2021 SCMR 1295) *Anwar Shah & another v. The State & another*, (2021 SCMR 1032) and *Saad Zia v. The State & others* (2023 SCMR 1898).

5. Mr. Memon, learned counsel for the complainant opposed the grant of bail mainly contending that a *prima facie* case has been established against the applicant. The complainant and eyewitnesses have provided consistent testimony regarding the date, time, place, number of accused, and their respective roles. The applicant and co-accused Atta Muhammad are specifically nominated as those who inflicted head injuries to the deceased resulting in his death. He also argued that the medical evidence is entirely consistent with the ocular testimony. The postmortem report confirms that injuries were caused by hard and blunt substance, consistent with the

allegation that *lathi/danda* blows were inflicted. The doctor's opinion that Injury No.1 was the cause of death in ordinary course of life is a professional medical conclusion based on the examination and available reports. The applicant was a fugitive for about seven (07) years from the registration of the FIR. This abscondence is a strong indicator of consciousness of guilt and his involvement in the offense. The fact that he fled and remained absconding for years demonstrates his awareness of criminal culpability. He also contends that whilst certain co-accused may have been acquitted, the present applicant's role is distinct. As a principal accused alleged to have inflicted fatal head injuries, his culpability is different and greater than that of others. The acquittal of co-accused does not *ipso facto* require the acquittal or bail of the present applicant. The alleged offense is murder (*Qatl-i-Amd*) under Section 302 PPC, a capital charge carrying a sentence up to death. Such grave offences warrant stringent bail conditions and careful judicial scrutiny. Granting bail without firm conviction of innocence would undermine public confidence in the criminal justice system. He further contends that the complainant has also preferred a Cr. Acquittal Appeal bearing No.12/2022 against the acquittal of co-accused named above and same is pending adjudication before this Court. In support of his arguments, he relied upon (2020 SCMR 1198) *Ghulam Abbas v. The State & another*, (2020 SCMR 993) *Zahoor Khan v. Akhter Muhammad & another*, (2023 SCMR 1724) *Allah Dewayo Shahani v. The State through Prosecutor General Sindh*, (2017 SCMR 325) *Sohail Waqar alias Sohaila v. The State & others*, (2013 P.Cr.L.J 1105) *Muhammad Hanif & others v. The State*, (2014 P.Cr.L.J 1126) *Raja Nadeem Rafique v. The State & another*, (2016 P.Cr.L.J 1120) *Sabir Hussain & another v. The State*, (2024 MLD 1848) *Anwar Ali & another v. The State*, (2023 YLR 1582) *Wazir Ali v. The State*, (2008 SCMR 1451) *Sher Muhammad v. The State*, (2023 SCMR 1724) *Allah Dewayo Shahani v. The State through Prosecutor General Sindh*, (2010 SCMR 966) *Shoukat Ilahi v. Javed Iqbal & others*, (2003 SCMR 68) *Mst. Qudrat Bibi v. Muhammad Iqbal & another* and (2024 SCMR 1576) *Itbar Muhammad v. The State & others*.

6. Learned DPG for the State adopts the arguments advanced by the learned counsel for the complainant; however, reluctantly concedes that the Medico Legal Officer initially kept his opinion “reserved” for sufficient period and allegation of causing injuries to the deceased as per prosecution theory is attributed to the applicant and co-accused Atta Muhammad and only injury No.1 *viz* swelling of left parietal bone is found to be fatal and no radiological

opinion (MRI & C.T Scan) was even available to substantiate such medical opinion.

7. This Court has carefully perused the entire record, including the FIR, postmortem reports, medical certificates and the judgment of the learned Trial Court dated 26th March, 2022, wherein co-accused were acquitted, the dismissal order of the learned Additional Sessions Judge-I/MCTC, Ghotki dated 04th June, 2025, and the submissions of all parties.

8. The critical issue that emerges from this record is the irreconcilable conflict between the ocular (eyewitness) version and the medical evidence on record. This Court acknowledges that, without doubt, the accused did cause injury to the head of the deceased. This fact is not in dispute. The injuries alleged are corroborated by medical evidence showing swelling and abrasions on the parietal bone and other parts of the head. However, the Court must emphasize the following critical distinction: Whilst it may be accepted that the accused caused head injuries, the material question that emerges is which of the two accused (Abdul Ghaffar and Atta Muhammad) caused the fatal injury? And more fundamentally, was the injury sustained by the deceased the actual cause of his death? The medical evidence, as examined by the learned Trial Court in its judgment dated 26th March, 2022, raises grave doubts on this issue:

9. The postmortem examination was conducted on 04th April, 2018, five (05) days after the alleged incident. At the time of this postmortem, the doctor explicitly kept his opinion on the cause of death "reserved." This is a red flag in medical jurisprudence. A doctor does not reserve his opinion when the cause of death is apparent or evident. The fact that the doctor did not form an opinion at the initial examination suggests that the injuries, on their face, were not obviously fatal. The chemical and histopathological reports came back negative, showing no signs of poison, no pathological changes in vital organs (heart, liver, kidney, lungs), and no evidence of internal injury or disease that could have contributed to death. This is significant. If the head injuries were the sole cause of death, one would expect to find some abnormality in the brain tissue, membranes, or other organs, yet none was found. After the negative reports, the doctor retrospectively concluded that Injury No.1 (swelling on the left parietal bone) was the cause of death. However, this conclusion was reached without any radiological evidence such as MRI or C.T scan to demonstrate internal brain injury, cerebral edema, or

intracranial hemorrhage. Such imaging would be standard procedure in a case of alleged head injury causing death. The absence of such evidence, combined with the negative histopathology, creates a reasonable doubt whether the documented superficial swelling actually caused death. The injuries documented are superficial in nature i.e. a swelling of 5 cm x 4 cm and an abrasion of 1½ cm x ½ cm. Whilst such injuries can certainly be painful and require treatment, injuries of this minor character, standing alone, are rarely fatal in an otherwise healthy person.

10. The Supreme Court of Pakistan has repeatedly held that when there is a material conflict between ocular and medical evidence, the medical evidence must be examined with utmost scrutiny. Where medical evidence casts doubt upon the ocular account, the accused is entitled to benefit of such doubt. The second critical issue is that the FIR nominates two accused Abdul Ghaffar and Atta Muhammad as those who inflicted head injuries. According to the prosecution version, both of them are alleged to have caused danda blows to the head of the deceased. The fundamental question is: Which of the two caused the fatal injury?

11. The medical evidence does not and cannot distinguish between injuries caused by one accused versus the other. The postmortem shows injuries on the head, but does not specify whether these injuries were inflicted by one blow from one person, or multiple blows, or a combination of blows from both accused. In the absence of clear medical evidence attributing the fatal injury to the specific accused (as opposed to Atta Muhammad), a reasonable doubt arises regarding the applicant's criminal culpability. This doubt is compounded by the fact that the absconding accused Atta Muhammad remains at large, and no clarity exists as to the respective contribution of each accused to the fatal injury. This problem was addressed by the learned Trial Court in acquitting co-accused. The Court reasoned that when multiple accused are alleged to have caused injuries, but medical evidence does not clearly establish which accused caused which injury, the evidence becomes unreliable for purposes of conviction on a capital charge.

12. The acquittal of co-accused Aijaz Ahmed, Abdul Wahid, Liaquat Ali, Rehmatullah, and Abdul Rasool on 26th March, 2022, is a material consideration before this Court. Whilst the roles of these co-accused differed from that of the applicant (they were not alleged to have inflicted head injuries), the fundamental ground for their acquittal was that the prosecution

evidence was fraught with infirmities, contradictions, and material omissions rendering it unsafe to convict on a capital charge. The learned Trial Court specifically noted fifteen (15) material inconsistencies between the testimony of different prosecution witnesses, including contradictions regarding timing of arrival at the incident site, whether witnesses were present at the hospital, whether crops were damaged (witnesses alleged damage; IO found none), duration of the alleged altercation (10 minutes vs. 15 minutes), the improper handling of evidence (mashirnama allegedly prepared before FIR but containing FIR number), contradictory descriptions of injury locations. These same infirmities plague the prosecution evidence as it relates to the applicant. The same witnesses testified both in the trial of co-accused (resulting in acquittal) and in the forming of the case against the applicant. The same medical evidence, the same FIR, and the same incident form the basis for both. The principle of consistency in criminal jurisprudence demands that if the evidence was insufficient to convict co-accused, it cannot suddenly become sufficient to convict the applicant, absent material new evidence or material change in circumstances.

13. The golden rule of criminal law is that the benefit of doubt shall go to the accused. When the same prosecution witnesses and the same evidence have been found doubtful in one trial; that doubt does not evaporate merely because the accused in question was not present during that trial. This Court acknowledges that the applicant was an absconder for about seven years from the registration of the FIR. Absconsion can indeed be a relevant factor in judicial consideration of bail, as it may suggest consciousness of guilt. However, the Supreme Court of Pakistan has consistently held that absconding, standing alone, is not a sufficient ground to deny bail when other evidentiary factors raise doubts favoring the accused. The legal position in this regard is crystalline: when a case emerges with other doubts which go in favor of the accused such as conflict between medical and ocular evidence, infirmities in prosecution witnesses' testimony, and the acquittal of co-accused on similar evidence absconding cannot be treated as an overriding factor that automatically denies bail. Absconding is, in essence, an extra-judicial conduct. Its significance diminishes when the judicial examination of evidence reveals substantive doubt regarding culpability. The purpose of bail is not to punish absconsion; it is to secure the attendance of the accused before the Court whilst ensuring fair trial. Once the applicant has been arrested and

is before the Court, the primary evil of absconsion (i.e., non-availability for trial) is remedied.

14. The applicant has been in custody for about twenty (20) months. He is not a flight risk now, as he is represented by competent counsel and is prepared to surrender to bail terms. The purpose of custody to secure his presence has been achieved. Further detention pending trial, in the face of evidentiary doubts, would constitute unjust deprivation of liberty. This Court is satisfied that the case merits further inquiry into several critical questions before the applicant's guilt can be determined with certainty. The questions regarding fatal injuries, cause of death, the reliability of ocular evidence and malafide, if any of the complainant, cannot be answered in this bail application. They require full trial evidence, cross-examination, and adjudication. It is precisely for this reason that bail exists to allow the accused to remain free pending trial when the evidence is not clear-cut, and to protect against unjust prolonged incarceration. The applicant has been in jail since March 2024, a period of about twenty (20) months. Whilst the applicant was initially absconding, once apprehended, his continued detention in the face of evidentiary doubts is inequitable. The purpose of remand and custody is to facilitate investigation and trial, not to serve as an instrument of pre-conviction punishment. The applicant has been remanded; he is no longer needed for investigation as the case has been challan'd. Continued detention now serves only to punish him before conviction, a practice antithetical to the principles of criminal jurisprudence enshrined in the Constitution and the Cr.P.C. Accordingly, the Criminal Bail Application is hereby allowed subject to furnishing solvent surety in sum of Rs.5,00,000/- (Five Hundred Thousand Rupees) along with P.R Bond of like amount to the satisfaction of the learned trial court. Learned trial court is directed to expedite the trial and conclude the matter preferably within 03 months. Needless to mention that above assessments are tentative in nature and shall not affect the merits of trial.

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