

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2129 of 2025

Applicant : Owais Niazi, Through: Mr. Afzaal Ahmed Walana, Advocate

Complainant : Zohaib Ahmed, Through: Mr. Mazhar Iqbal Khan Niazi, Advocate

The State : The State: Through Mr. Zahoor Shah, Additional Prosecutor General, Sindh

Date of hearing : 20.02.2026

Date of Order : 20.02.2026

ORDER

Jan Ali Junejo, J:-- Through the instant Criminal Bail Application filed under Section 497 Cr.P.C., the applicant Owais Niazi seeks post-arrest bail in case arising out of FIR No.208/2025, under Sections 302/34, P.P.C., registered at Police Station Madina Colony, District Keamari. The applicant has challenged the order dated 31.07.2025 passed by the learned VII-Additional Sessions Judge, Karachi West, whereby his bail application was declined.

2. Briefly stated, as per prosecution case set out in FIR lodged on 27.05.2025 at the instance of complainant Zohaib Ahmed, it is alleged that on 27.05.2025 at about 2000 hours, four accused persons namely Walayat, Junaid, Javaid and Owais (present applicant) allegedly came in the street and co-accused Walayat fired upon the complainant's brother Jahanzaib, causing firearm injury on his waist. The injured was shifted to Civil Hospital, Karachi, where he remained under treatment and subsequently expired on 05.06.2025,

whereafter Section 324 PPC was converted into Section 302 PPC. After completion of investigation, challan has been submitted before the competent Court.

3. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated due to prior enmity. He argued that the FIR contains general and omnibus allegations against four brothers, and specific role of firing is attributed only to co-accused Walayat. No overt act has been assigned to the present applicant. It is further contended that the deceased survived for about eight days after the incident, which indicates that the injury was not immediately fatal. Learned counsel further argued that the complainant party was aggressor and evidence in the shape of photographs shows bullet marks on the applicant's house, which probabalizes the defence version. He also pointed out that statements under Section 161 Cr.P.C. attribute firing only to Walayat and no weapon has been recovered from the applicant. It is prayed that the case of the applicant falls within the ambit of further inquiry under Section 497(2) Cr.P.C., therefore he may be admitted to bail.

4. Conversely, the learned counsel for the complainant, vehemently opposed the bail application, contending that the applicant is specifically nominated in the FIR, was present at the scene of occurrence, and acted in concert with co-accused in furtherance of their common intention. It was argued that ample incriminating material collected during investigation connects the

applicant with the commission of the offence, and that the plea of false implication or shifting the blame solely onto co-accused Walayat cannot be examined without conducting a deeper appreciation of evidence, which is not permissible at the bail stage. It was further submitted that the nature of the allegations, the manner in which the offence was committed, and the punishment prescribed, being capital in nature, disentitle the applicant from the concession of bail. Accordingly, it was prayed that the bail application be dismissed.

5. The learned Additional Prosecutor General, Sindh, submitted that the applicant is nominated in the FIR with specific presence at the place of incident and has acted in furtherance of common intention. It is argued that sufficient incriminating material is available on record connecting the applicant with the commission of offence. It is further contended that deeper appreciation of evidence is not permissible at bail stage and the offence alleged carries capital punishment; therefore, the bail application merits dismissal.

6. I have considered the arguments advanced by learned counsel for the parties and perused the available material with their assistance. Admittedly, the specific role of firing is assigned to co-accused Walayat, who allegedly caused the firearm injury to the deceased. So far as the present applicant is concerned, no specific overt act of causing injury has been attributed to him in the FIR. The allegation against him is of his presence along with co-accused persons. Whether the applicant shared common intention within the

meaning of Section 34 PPC is a matter which requires deeper appreciation of evidence and can only be determined after recording of evidence during trial. It is also a matter of record that the deceased remained under treatment for about eight days before his demise. The medical aspect, nexus between injury and death, and individual role of each accused would require thorough examination at trial. At this stage, the material available on record does not prima facie demonstrate that the applicant himself caused the fatal injury.

7. Furthermore, no recovery of weapon has been effected from the present applicant. The statements of witnesses recorded under Section 161 Cr.P.C., prima facie, attribute the act of firing to co-accused Walayat alone. The question as to whether the applicant acted with common intention is a debatable issue, calling for further inquiry within the contemplation of Section 497(2) Cr.P.C.

8. It is a settled principle of law that at the bail stage only a tentative assessment of the material available on record is to be undertaken, and deeper appreciation of evidence is to be eschewed. In the facts and circumstances of the present case, the role attributed to the applicant, the absence of any specific injury assigned to him, and the other attending circumstances cumulatively create reasonable grounds for further inquiry into his guilt. In similar circumstances, the Honourable Supreme Court in *Jahanzeb and others v. State through A.G. Khyber Pakhtunkhwa Peshawar and another* (2021 SCMR 63) was pleased to grant bail to an accused against whom no overt act was attributed, observing inter alia that:

“Perusal of the aforesaid provision reveals the intent of the legislature disclosing pre-condition to establish the word “guilt” against whom accusation is levelled has to be established on the basis of reasonable ground, however, if there exists any possibility to have a second view of the material available on the record then the case advanced against whom allegation is levelled is entitled for the relief in the spirit of section 497(2), Cr.P.C. In the instant case, as no overt act is ascribed to the petitioners except the allegation of ineffective firing not supported by any recovery of weapon and as such the recovery of crime empties from the place of occurrence has no legal sanctity, therefore, the facts and circumstances narrated above brings the case of the petitioners of further inquiry falling within the ambit of section 497(2), Cr.P.C. entitling them for the concession of bail”. The emphasis is supplied.

9. For the reasons delineated hereinabove, the instant Criminal Bail Application is allowed. The applicant Owais Niazi is admitted to bail subject to furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand Only) and P.R. bond in the like amount to the satisfaction of the learned trial Court. Needless to observe that the observations made herein are tentative in nature and shall not prejudice the case of either party during trial. These are the detailed reasons of the Short Order dated: 20-02-2026.

JUDGE