

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S-306 of 2025

Applicants : 1) Muhammad Moosa s/o Peeran Bux @ Peer Bux
2) Shahzado s/o Muhammad Usman @ Usman
Through Mr. Abdul Raheem Mahar, Advocate

Complainant : Shahnawaz s/o Allah Bachaya, Laghari
Through Chaudhry Shahid Hussain Rajput,
Advocate

The State : Through Mr. Muhammad Raza Katohar, DPG

Date of Hearing : 01.12.2025
Date of Order : 02.01.2026

ORDER

KHALID HUSSAIN SHAHANI, J.— Applicants Muhammad Moosa and Shahzado seek post-arrest bail in a case bearing crime No.01 of 2025, for offences punishable under Sections 364, 302, 201, 34 PPC, registered at Police Station Khenju, after their earlier bail plea was declined by the learned Additional Sessions Judge, Daharki vide order dated 12.03.2025.

2. The facts of the prosecution case as depicted in the FIR lodged on 09.01.2025 at 1830 hours are that on 04.01.2025 at about 2000 hours, complainant Shah Nawaz along with witnesses Ali Gul and Farooque were present near their house when the applicants Muhammad Moosa and Shahzado. both armed with K.Ks, co-accused Misri armed with G-3 rifle, and an unknown person armed with a hatchet arrived on motorcycles. It is alleged that accused Muhammad Moosa and Misri abducted the complainant's brother Ali Nawaz on a motorcycle at gunpoint while issuing threats regarding a land dispute. The complainant party remained silent due to fear. Subsequently, on 08.01.2025, the complainant approached the accused persons who allegedly made an extra-judicial confession that they had killed Ali Nawaz, with accused Shahzado beheading him, and buried the body. The dead body was subsequently recovered, and the FIR was lodged five days after the alleged abduction.

3. Learned counsel for the applicants contended that the applicants are innocent and have been falsely implicated due to admitted enmity over landed

property. He strenuously argued that the alleged incident occurred on 04.01.2025, yet the FIR was registered on 09.01.2025 with a delay of five days which has not been plausibly explained. He submitted that despite the alleged abduction occurring in the presence of witnesses at gunpoint, no complaint was made to any authority for five days, which casts serious doubt on the veracity of the prosecution's story. It is further argued that this is a case of an unseen incident where no one witnessed the actual commission of the murder, and the entire case hinges on the alleged extra-judicial confession of the accused, which is a weak type of evidence and holds no evidentiary value without strong independent corroboration. Learned counsel highlighted that the arrest of accused Muhammad Moosa is shown on 13.01.2025 and Shahzado on 15.01.2025, whereas, in reality, Muhammad Moosa was arrested on 10.01.2025 and kept in illegal detention. He placed reliance on the order of the learned Judicial Magistrate dated 13.01.2025, wherein the Magistrate observed that Muhammad Moosa was seen in print media as arrested but was not produced before the court, necessitating a letter from the Magistrate. This conduct of the police suggests malafides. Furthermore, he pointed out that the statement of PC Khan Muhammad recorded under Section 161 Cr.P.C indicates that the dead body was recovered on torch light at the pointation of the complainant, not the accused, which demolishes the evidentiary value of the recovery against the applicants. He asserted that all ocular witnesses are close relatives and interested witnesses, and no independent witness was associated.

4. Conversely, the learned DPG for the State duly assisted by Mr. Shahid, learned counsel for the complainant, vehemently opposed the grant of bail. They argued that the applicants are nominated in the FIR with specific roles. Learned counsel for the complainant submitted that the hatchet was recovered on the pointation of accused Shahzado and that the brutal nature of the offence, involving the beheading of the deceased, disentitles the applicants to the concession of bail. They contended that the delay was due to the threats

and the initial efforts of the complainant to recover the abductee through private jirga/negotiation. Learned counsel for the complainant also placed on record a USB, according to him the applicants are shown digging earth, wherefrom on there pointing dead body of deceased was recovered; however, learned DPG for the State conceded that initially such piece of evidence was neither part of investigation nor sent for forensic analysis.

5. I have heard the learned counsel for the parties and perused the police papers. Admittedly, there is a delay of five days in the lodging of the FIR. The incident allegedly took place on 04.01.2025, but the matter was reported to the police on 09.01.2025. It is contrary to human conduct that a brother is abducted at gunpoint in the presence of witnesses, yet the complainant remains silent and does not approach any high official or police authority for five days. This unexplained delay creates a dent in the prosecution's case and allows for the possibility of deliberation and consultation. The case is mainly based on the "last seen" evidence and the alleged extra-judicial confession. It is a settled principle of law that extra-judicial confession is a weak type of evidence and requires stringent corroboration, which appears to be lacking at this stage. The evidence regarding the "last seen" circumstance is also provided by interested witnesses who are close relatives of the deceased, and no independent witness from the locality has been cited.

6. As regards the recovery, a crucial contradiction has emerged from the police papers. The statement of PC Khan Muhammad under Section 161 Cr.P.C explicitly states that the dead body was recovered on torch light at the pointing of the complainant. If the place of burial was already known to the complainant, the subsequent recovery or pointation attributed to the accused loses its legal sanctity under Article 40 of the *Qanun-e-Shahadat* Order, 1984. Furthermore, the plea of the applicants regarding illegal detention and prior arrest is supported by the judicial record, specifically the order of the learned Magistrate dated 13.01.2025, which noted that accused Muhammad Moosa had

been seen in the media as arrested prior to his official production. This lends credence to the defense plea of malafide on the part of the police. In a case of unseen incident where the chain of circumstances must be unbroken, such glaring infirmities as the delay in FIR, the contradiction regarding the recovery of the corpse, and the doubtful arrests make the case one of further inquiry falling within the ambit of Section 497(2) Cr.P.C. The tentative assessment of the material available on record suggests that the guilt of the applicants requires to be determined at the trial after recording of evidence. Following the dictum of the Honorable Supreme Court that the benefit of doubt, even at the bail stage, must be extended to the accused, I am of the considered view that the applicants have made out a case for further inquiry as envisaged under section 497(2) Cr.P.C. Accordingly, this bail application is allowed. The applicants Muhammad Moosa and Shahzado are admitted to bail subject to their furnishing solvent surety in the sum of Rs.500,000/- (Rupees Five Hundred Thousand only) each and P.R bond in the like amount to the satisfaction of the learned trial Court. The observations made herein are tentative in nature and shall not prejudice the case of either party at the trial.

J U D G E