

THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Before:

*Mr. Justice Shamsudin Abbasi, J.
Mr. Justice Khalid Hussain Shahani, J.*

Criminal Bail Application No. D-94 of 2025

Applicant: Abdul Karim son of Muhammad Essa Dahani
Through Mr. Habibullah G. Ghouri, Advocate.

Complainant: Samano Khan son of Chakar Khan Bakhani
Through M/s. Abdul Ghani Bijarani and Amanullah Luhur,
Advocates.

The State: Through Mr. Ali Anwar Kandhro, Additional Prosecutor
General, Sindh assisted by Mr. Zain-ul-Abideen Abbasi,
Assistant Prosecutor General, Sindh.

Date of hearing: 01.01.2026

Date of Order: 01.01.2026

O R D E R

Khalid Hussain Shahani, J.— Applicant Abdul Karim Dahani, seeks post arrest bail in a case bearing crime No. 53/2025, registered at Police Station Tangwani, District Kashmore-Kandhkot, for offences under Sections 302, 384, 385, 386, 337-H(ii), 148, 149 PPC, read with Sections 6/7 of the Anti-Terrorism Act, 1997. Prior to this bail of applicant was declined by the learned Anti-Terrorism Court, Kashmore at Kandhkot, for similar relief vide order dated 08.10.2025.

2. The prosecution case, as disclosed in the FIR, is that the complainant, Samano Khan is a resident of the locality and that the accused Chakar Khan and his associates are notorious criminals of the area who had been demanding bhatta (extortion money) from the complainant's family. On refusal to pay, the complainant's party was threatened with dire consequences. On 16.06.2025, at about 03:00 a.m., three known and three unknown accused persons, along with the present applicant/accused, duly armed with Kalashnikov rifles, attacked the complainant's party. In the course of the attack, the complainant's brother, Muhammad Khan, received butt blows at the hands of co-accused Nazeer Ahmed and was shot at close range by co-accused Chakar Ali, who fired a bullet that struck him on the left side of the neck, causing his death on the spot. Thereafter, the accused persons made aerial firing and escaped from the scene.

3. Learned counsel for the applicant submits that the applicant has been falsely implicated in the FIR on account of political rivalry and enmity with the complainant's family. It was urged that the applicant is not a member of any criminal gang and has no antecedents of such grave offences, and that his name has been deliberately included to implicate him in a heinous crime. It was further contended that there is a noticeable delay in the lodging of the FIR, as it was registered with a delay of about nine hours after the incident, which casts serious doubt on the spontaneity and credibility of the prosecution version. A delayed FIR, it was argued, raises a presumption that the story was fabricated or embellished during the interval, and cannot be treated as a trustworthy piece of evidence at the bail stage. Learned counsel emphasized that, from a bare reading of the FIR, the specific role of causing the fatal butt blow and firearm injury has been attributed to co-accused Nazeer Ahmed and Chakar Ali, respectively, while the applicant is merely shown as present at the scene, without any overt act of violence or direct participation in the killing. In such circumstances, it was submitted that it remains to be seen whether the applicant shared the common intention required to attract liability under Section 34 PPC and the Anti-Terrorism Act.

4. It was also argued that the demand of bhatta, as alleged in the FIR, is specifically directed against the principal accused, Chakar Dahani, and there is no allegation that any amount of bhatta was actually received by the applicant or that he personally demanded or collected any such amount. Therefore, it was urged that the ingredients of Sections 6/7 of the Anti-Terrorism Act, 1997, which require a terrorist act with a specific intent, are not made out against the applicant on the face of the record. In support of these submissions, learned counsel placed reliance on 1996 SCMR 1125, 1996 SCMR 1654, 1999 SCMR 1320, 1999 SCMR 1360, and 2016 SCMR 1654. These authorities, it was submitted, stand for the well-settled proposition that where an accused is not assigned a specific overt act, and his presence is merely alleged without proof of active participation or common intention, the case falls within the category of "further inquiry" under Section 497(2) Cr.P.C., and bail should be granted. Learned counsel also submitted that the investigation in the case has been completed and the challan has been submitted before the trial court, so the applicant is no longer required for the purposes of investigation. It was also urged that the case against the applicant, on the material available, requires further inquiry and does not disclose a case of such overwhelming gravity that would justify his continued incarceration pending trial.

5. Learned Additional Prosecutor General, appearing for the State, opposed the grant of bail on the ground that the applicant is not only named in the FIR but was present at the scene of occurrence armed with a Kalashnikov rifle. It was submitted that empty shells recovered from the site of the incident match the type of weapon recovered from the applicant, which establishes his active presence and participation in the incident. It was urged that even though no specific allegation of causing the fatal injury is assigned to the applicant, he facilitated the commission of the offence by his armed presence and by creating an atmosphere of terror, thereby aiding and abetting the principal perpetrators. In such circumstances, it was contended that the applicant is not entitled to the concession of bail, particularly in a case involving murder and terrorism.

6. Learned counsel for the complainant also opposed the bail application, submitting that although the applicant has not been assigned an active role in the actual killing, this is a case of bhatta/extortion, in which one person has lost his precious life. It was urged that the applicant is a member of the gang involved in the incident and is liable for vicarious liability under the doctrine of common intention and unlawful assembly. It was further submitted that the offences with which the applicant is charged are heinous in nature, carrying capital punishment, and that bail cannot be granted as a matter of routine in such serious cases. In support of this contention, reliance was placed on the decision reported as 2023 SCMR 1182.

7. It is not in dispute that, in this unfortunate incident, one person, Muhammad Khan, lost his life, and that the incident involved armed violence and the use of firearms. The gravity of the offence and the loss of human life are deeply regrettable, and we fully appreciate the anguish of the complainant and the seriousness with which such cases must be treated. However, at the stage of post-arrest bail, we are not called upon to decide the guilt or innocence of the accused; rather, the limited question is whether the case against the applicant is of such a nature that it requires further inquiry, and whether there are reasonable grounds for believing that he is not guilty of the offence, or that he is entitled to be released on bail pending trial.

8. A careful perusal of the FIR reveals that the present applicant, Abdul Karim Dahani, is described as being armed with a Kalashnikov rifle at the scene, but no overt act of causing the fatal injury is attributed to him. The FIR specifically assigns the butt blow to co-accused Nazeer Ahmed and the fatal firearm injury to co-accused Chakar Ali, while the applicant is merely shown as present at the scene, without any allegation that he fired at the deceased or directly caused his death. In such circumstances, the question arises

whether the applicant shared the common intention to commit murder and whether the ingredients of Sections 6/7 of the Anti-Terrorism Act, 1997, are made out against him on the face of the record.

9. As regards the allegation of bhatta, it is true that the FIR mentions that the accused party had been demanding bhatta from the complainant's family. However, on a plain reading, the demand of bhatta is specifically linked to the principal accused, Chakar Dahani, and there is no averment that the applicant personally demanded or received any amount of bhatta. Moreover, it is not alleged that any such amount was actually paid or recovered from the applicant. In this context, it is worth noting that the allegation of bhatta appears to have been made in a manner that seems designed to strengthen the prosecution case and to invoke the Anti-Terrorism Act, but the essential ingredients of a terrorist act under Sections 6/7 ATA are not clearly spelled out against the applicant in the FIR. At this stage, the Court is only required to make a tentative assessment, and it cannot be said with certainty that the case against the applicant squarely falls within the ambit of terrorism as defined in the Anti-Terrorism Act, 1997.

10. It is a well-settled principle of criminal jurisprudence that every accused is presumed to be a "blue-eyed boy of law" until he is found guilty, and that the law cannot be stretched in favour of the prosecution, particularly at the bail stage. The object of bail is to secure the attendance of the accused at trial while preserving the presumption of innocence, and incarceration at the pre-trial stage should not amount to punishment in itself. Where the prosecution case, on the face of the FIR and the available material, shows that the accused was present at the scene but no specific overt act is attributed to him, and where the case hinges on the doctrine of common intention and unlawful assembly, the matter is generally held to require further inquiry under Section 497(2) Cr.P.C.

11. In the present case, the applicant's role, as disclosed in the FIR, is that of an armed person present at the scene, but without any allegation of direct participation in the killing or of receiving any bhatta. The investigation has been completed and the challan has been submitted, so the applicant is no longer required for the purposes of investigation. Under these circumstances, we are of the considered view that the case against the applicant is one of further inquiry as contemplated under Section 497(2) Cr.P.C., and that he is entitled to the concession of post-arrest bail. Accordingly, Bail Application is allowed. The applicant, Abdul Karim, shall be released on bail, subject to his furnishing a solvent surety in the sum of Rs. 300,000/- (Rupees three hundred thousand

only) and a personal bond in the like amount, to the satisfaction of the learned trial court.

12. It is needless to mention that the observations made herein are tentative in nature and are confined to the limited purpose of deciding the bail application; they shall not prejudice the case of either party at the trial

Judge

Judge

Manzoor