

THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail App. No. S – 270 of 2026

[Khalid Hussain Buriro v. The State]

Date of hearing : **31.08.2026**

Date of decision : **31.08.2026**

Mr. Ali Ahmed Khan, Advocate for applicant.
Mr. Muhammad Hamzo Buriro, Advocate for complainant.
Mr. Aftab Ahmed Shar, Additional Prosecutor General.

ORDER

ARBAB ALI HAKRO, J. – Through the instant application, the applicant/accused seeks post-arrest bail in Crime No.55/2024, registered at Police Station Sangi, District Sukkur, for offences punishable under Sections 324, 337-A(i), 337-F(i), 114, 147, 148 and 149, P.P.C.

2. Briefly stated, the prosecution case, as set out in the F.I.R., is that the complainant, Ghulam Nabi, was a witness in Crime No. 109/2024 of Police Station Sangi, registered under Sections 324, 506/2, 337-A(i), 337-F(v), 403, 114, 147 and 149, P.P.C. According to him, the accused party, including the present applicant, was annoyed with him for refusing to resile from his evidence in that case and had been threatening to harm him. It is alleged that on 28.05.2024 at about 07:30 p.m., while the complainant was sitting in front of his shop in the company of witnesses, a Mazda pickup stopped there, and the accused persons, armed with hatchets and lathies, alighted from it. The role attributed to the present applicant is that he abused the complainant, exhorted his companions to catch hold of him and not spare him because he had refused to withdraw his evidence, and thereafter caused a hatchet blow to the complainant above his left eye, from which blood began to ooze. The remaining accused are alleged to have caused lathi blows on the other parts of his body. The complainant was first taken to Taluka Hospital, Pano Aqil, from where he was referred to Civil Hospital, Sukkur, for further treatment. The F.I.R. was registered on 29.05.2024.

3. Learned counsel for the applicant contends that the applicant is innocent and has been falsely implicated; that there is a delay of one day in lodging the F.I.R., although the police station is situated at a distance of only seven or eight kilometers from the place of occurrence; that the occurrence took place after sunset and the source of identification was

solar light; that the injury attributed to the applicant is *Shajjah-i-Mudihah* under Section 337-A(i), P.P.C., which carries a punishment of five years, so that the case does not fall within the prohibitory clause of Section 497, Cr.P.C; that the applicant has remained in custody for a considerable period; and that the co-accused have already been admitted to bail, entitling the applicant to the concession of consistency. In support of his submissions, learned counsel has relied upon *Wazir Ali v. The State* (PLD 2005 Karachi 201) and *Aziz and 2 others v. The State* (2007 P Cr. L J 299).

4. Conversely, learned counsel for the complainant and the learned Additional Prosecutor General have opposed the grant of bail. They submit that the applicant is nominated in the F.I.R. with a specific and direct role, a position corroborated by the medical evidence; that the motive alleged by the complainant has an independent foundation in the record, inasmuch as the complainant was a prosecution witness in the earlier Crime No.109/2024, in which the present applicant was an accused; that the applicant was thereafter declared a proclaimed offender and remained in that status for a considerable period; and that the plea regarding the non-prohibitory character of the injury cannot be examined in isolation from the allegation under Section 324, P.P.C., and the attending circumstances of the occurrence. Reliance has been placed upon *Muhammad Siddique v. Imtiaz Begum and 2 others* (2002 SCMR 442), *Ghulam Farooq and others v. The State* (2025 YLR 1234) and *Imtiaz Hussain alias Imtiaz and another v. The State and another* (2025 YLR 1865).

5. I have heard learned counsel for the parties as well as the learned Additional Prosecutor General and have gone through the available record with their assistance.

6. Before taking up the individual grounds urged on behalf of the applicant, a circumstance emerging from the record calls for notice. The applicant was previously nominated in Crime No.109/2024 of Police Station Sangi, registered in respect of an occurrence dated 25.12.2023 under Sections 324, 506/2, 337-A(i), 337-F(v), 403, 114, 147 and 149, P.P.C. The present complainant, Ghulam Nabi, was a witness in that case. The applicant subsequently obtained post-arrest bail in that case from the learned Additional Sessions Judge, Pano Aqil, vide order dated 08.10.2025.

7. The circumstances assume considerable significance, for the motive set up by the prosecution in the present case does not rest on an isolated or unexplained assertion. The complainant has specifically alleged that the accused party was annoyed with him because he had

declined to withdraw his evidence in Crime No.109/2024. The earlier case relates to an occurrence on 25.12.2023, whereas the present occurrence is alleged to have taken place on 28.05.2024. The earlier criminal litigation was thus already in existence when the present occurrence took place, and the person said to have been the target of the assault was admittedly a witness in it.

8. Yet another circumstance emerges from the case diaries. The record of the learned trial Court shows that the applicant was declared a proclaimed offender and remained in that status from 10.10.2024 until 09.09.2025. The record further reflects that the co-accused Abdul Wahid and Bakhtullah were granted post-arrest bail, with their sureties furnished on 09.09.2025, whereas the report concerning the present applicant was received the following day, that is, 10.09.2025. This aspect bears upon the applicant's conduct and the procedural history of the case and cannot be left out of consideration when exercising discretionary jurisdiction under Section 497, Cr.P.C.

9. Before advertent to the contentions raised at the bar, it is necessary to keep in view the standard by which the material is to be examined at this stage. In a bail matter, the Court does not undertake a deeper appreciation of the record; it has only to see, upon a tentative assessment of the material, whether reasonable grounds exist for believing that the applicant is guilty of the offence alleged against him¹.

10. Learned counsel for the applicant has laid considerable emphasis upon the contention that the injury attributed to the applicant is *Shajjah-i-Mudihah*, punishable under Section 337-A(i), P.P.C and that the case therefore does not attract the prohibitory clause of Section 497 Cr.P.C. There can be no cavil with the proposition that where the offence does not fall within the prohibitory clause, the grant of bail is the rule and its refusal an exception. The rule, however, is not absolute and an accused cannot claim bail as a matter of right merely because the punishment provided for the offence lies outside the prohibitory clause. In **Muhammad Siddique** (supra), relied on by learned counsel for the complainant, the Supreme Court held that no one can claim bail as of right in a non-bailable offence even though the offence does not fall under the prohibitory clause of Section 497 Cr.P.C. The discretion of the Court thus remains a judicial discretion, to be exercised upon a consideration of the nature of the accusation, the role attributed to the accused, the material collected during the investigation and the attending circumstances of the case.

¹ That principle is well settled and has been reiterated by the Honourable Supreme Court in Chairman, National Accountability Bureau v. Nisar Ahmed Pathan (PLD 2022 SC 475) and in Bilal Khan v. The State (2020 SCMR 937)

11. The exceptions to that rule have not been left at large. In **Muhammad Daud**², the Supreme Court reiterated that where the offence does not fall within the prohibitory clause, the grant of bail is the rule and refusal the exception, unless exceptional circumstances exist, including, inter alia, repetition of the offence and absconding. The same view was taken in **Hakeem**³, where the extraordinary and exceptional cases in which the concession may be withheld were identified as including the likelihood of the accused absconding, the apprehension of his tampering with the prosecution evidence and the danger of the offence being repeated.

12. Examined on that touchstone, the case of the applicant does not turn merely upon the classification of the injury and more than one of the recognized exceptions is attracted. In the first place, the record of the learned trial Court shows that the applicant absented himself from the proceedings in this very case and remained a proclaimed offender for about 11 months. Secondly and of greater importance, the accusation itself is that the applicant assaulted the complainant in order to compel him to resile from his evidence in an earlier criminal case in which the applicant stood arraigned as an accused. The apprehension of interference with the prosecution evidence is, therefore, not a matter of speculation in this case; it forms the very substance of the accusation contained in the F.I.R. An attempt to pressurize or win over prosecution witnesses has consistently been treated by the Supreme Court as a matter going to the root of the administration of criminal justice⁴.

13. The injury, moreover, cannot be examined in isolation from the manner in which it is alleged to have been caused. The prosecution has attributed to the applicant a specific hatchet blow to the head, above the complainant's left eye. It is further alleged that the applicant exhorted his companions to seize the complainant and not to spare him because he had refused to withdraw his evidence. The weapon employed, the part of the body selected, the alleged exhortation and the background of the earlier criminal case are circumstances that merit tentative consideration at this stage.

14. The classification of the resultant injury as *Shajjah-i-Mudihah* does not, by itself, dispel the allegation under Section 324 P.P.C. The applicability of that provision turns on the intention or knowledge contemplated by it and is not governed solely by the eventual medical

² Muhammad Daud v. The State (2026 SCMR 115)

³ Hakeem v. The State (2026 SCMR 792)

⁴ as is evident from Zafar Iqbal v. The State (2021 SCMR 1909) and Rab Nawaz v. Shehzad Hassan (2025 SCMR 1357)

classification of the injury. Whether the requisite intention or knowledge was in fact present is a question which the learned trial Court alone can answer after recording evidence. To dissect the charge at this stage and to hold that Section 324 P.P.C. stands excluded would amount to a deeper appreciation of the material, an exercise which is not permissible while dealing with a bail application⁵. A similar view was taken by this Court at this Bench in **Imtiaz Hussain alias Imtiaz and another**⁶, where the concession of bail was declined to the accused who was assigned a direct role in causing a hatchet blow corroborated by the medical evidence, while it was extended to the co-accused whose role was not so supported.

15. As regards the delay of one day in lodging the F.I.R., it is settled that such delay is not invariably fatal to the prosecution case; much depends on the circumstances in which it occurred and upon whether a plausible explanation is forthcoming. In **Ghazi Arab**⁷, the Supreme Court held that where the delay stands explained by the steps taken in connection with medical or funeral formalities, it does not by itself cast doubt upon the occurrence, nor can it be treated as a ground for the grant of bail when sufficient material exists on record which prima facie connects the accused with the commission of the offence. In the present case, the delay is attributable to the transfer of the injured complainant from Taluka Hospital, Pano Aqil, to Civil Hospital, Sukkur, for treatment, and the medical evidence supports the fact that he sustained injuries in the alleged occurrence.

16. The contention that the occurrence took place after sunset and that the identification of the assailants rests upon solar light is likewise of little assistance to the applicant at this stage. The parties are known to each other and are connected through earlier criminal litigation. Where the accused and the complainant are previously acquainted, the plea of misidentification loses much of its force. In any event, the sufficiency of the light available at the place of occurrence is a matter to be determined after the witnesses have entered the box and have been subjected to cross-examination. It cannot be resolved upon the material presently available without embarking upon the very exercise which the law forbids at this stage.

17. Learned counsel has next invoked the rule of consistency on the ground that the co-accused have already been admitted to bail. The plea

⁵ reference in this behalf may usefully be made to Muhammad Jahangir Khan v. The State (2020 SCMR 1270)

⁶ Imtiaz Hussain alias Imtiaz and another v. The State and another (2025 YLR 1865)

⁷ Ghazi Arab v. The State (2025 SCMR 1967)

does not commend itself to me. The rule of consistency or the doctrine of parity is attracted only where the role ascribed to the accused seeking bail is the same as that of the co-accused who has obtained the concession. It obliges the Court to focus on the constituents of the role assigned before extending the benefit. That is the rule laid down in **Mst. Ishrat Bibi**⁸ and reaffirmed in **Naeem Sajid**⁹, wherein it was held that the rule of consistency applies only when the case of one accused is at par with that of the accused already granted bail.

18. In the present case, the applicant is attributed the specific role of causing a hatchet blow to the complainant above the left eye, and he is further said to be the person who exhorted his companions to assault the complainant on account of the complainant's refusal to withdraw from the earlier criminal case. The co-accused, on the other hand, are alleged to have inflicted lathi blows on other parts of the body. The two roles are not on a par, and that of the applicant calls for separate consideration. The mere fact that some of the co-accused have been enlarged on bail does not, therefore, in the circumstances of this case, entitle the applicant to the same concession on the principle of consistency.

19. The plea based on the applicant's having remained in custody for a considerable period is equally without substance. Such a period, by itself, does not create an indefeasible right to bail where the accused has failed to show that his case falls within the ambit of further inquiry or that the delay in the trial is attributable to the prosecution in the manner contemplated by law. That case proceeded on a delay in the conclusion of the trial found to be shocking, coupled with the conduct of the complainant and his witnesses in remaining absent to prolong the accused's incarceration. No such position obtains here. The applicant was arrested only after the proclamation proceedings had run their course, and nothing has been placed before this Court to suggest that the progress of the trial has been retarded by the prosecution.

20. It is true, as urged by learned counsel, that abscondence by itself is no ground to refuse bail to an accused who is otherwise entitled to it, as the Supreme Court held in **Zeeshan**¹⁰. This Court has not treated the applicant's abscondence as an independent ground for refusal. It is, however, a circumstance which the Court is entitled to weigh while exercising its discretion, the more so where the case lies outside the

⁸ Mst. Ishrat Bibi v. The State (2024 SCMR 1528) and reaffirmed in Naeem Sajid v. The State (2025 SCMR 129)

⁹ Naeem Sajid v. The State (2025 SCMR 129)

¹⁰ Zeeshan v. The State (2024 SCMR 1716)

prohibitory clause and the likelihood of abscondence is itself one of the recognized exceptions to the ordinary rule.

21. Upon a tentative assessment of the material presently available on record, I find that the applicant is specifically nominated in the F.I.R.; that a direct role in inflicting a hatchet blow to the head above the complainant's left eye is attributed to him; that the medical evidence prima facie corroborates the injury; that the complainant was admittedly a prosecution witness in the earlier Crime No.109/2024, in which the present applicant was an accused; that the alleged motive of compelling the complainant to withdraw his evidence therefore has a discernible foundation in the record; and that the applicant remained a proclaimed offender in this very case from 10.10.2024 until 09.09.2025.

22. These circumstances, taken cumulatively, persuade me that the applicant's case does not, at present, fall within the category of further inquiry contemplated by Section 497(2), Cr.P.C. The plea that the injury is *Shajjah-i-Mudihah* and that the case does not attract the prohibitory clause, though a relevant consideration, cannot outweigh the other circumstances appearing against the applicant, namely the specific role assigned to him, the allegation under Section 324 P.P.C., the motive arising out of the earlier criminal case, and the applicant's conduct as reflected in the record.

23. Consequently, the applicant has failed to make out a case for the grant of post-arrest bail. The instant Criminal Bail Application is, therefore, **dismissed**.

24. It is, however, clarified that the observations made hereinabove are tentative in nature and shall have no bearing upon the merits of the case at the trial. Learned trial Court shall proceed with the trial expeditiously and decide it in accordance with law, uninfluenced by anything said herein.

J U D G E

Abdul Basit