

HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Bail Applications No.S-862 of 2026

Applicant: Mst. Marwi @ Gudi through Mr. Ayaz Ali Gopang, Advocate.

Respondent: The State through Mr. Irfan Ali Talpur, Deputy Prosecutor General, Sindh.

Complainant: Ameer Bux present in person.

Date of hearing: 28.08.2026.

Date of order: 28.08.2026.

ORDER

RIAZAT ALI SAHAR, J: - The applicant, Mst. Marwi @ Gudi, through the instant Criminal Bail Application, seeks post-arrest bail in Crime No.353 of 2025, registered at Police Station Kazi Ahmed, for the offences punishable under Sections 302, 337-J, 337-A (i), 506 and 34 PPC. Earlier, bail plea of the applicant was dismissed by the learned 5th Additional Sessions Judge, Shaheed Benazirabad, vide order dated 14.01.2026.

2. Briefly stated, the prosecution case is that deceased Faiz Muhammad, husband of the applicant, was the brother of complainant Ameer Bux. According to the FIR, the deceased and the applicant had been married for about 27/28 years and had two daughters. It is alleged that the applicant had adopted Mehmoodullah @ More, whereas co-accused Babu, according to the complainant, was allegedly maintaining an illicit relationship with the applicant. The deceased is alleged to have objected to Babu's visits to his house, resulting in annoyance and altercations between the parties. The prosecution further alleges that during the night intervening 27/28.05.2025, at about 03:00 a.m., the complainant and his brothers, namely Muhammad Mithal and Yar Muhammad, upon hearing noise from the house of the deceased, reached there and allegedly saw the applicant pressing the neck of Faiz Muhammad, while co-accused Mehmoodullah @ More and Babu were standing there allegedly armed with lathies. The deceased allegedly became unconscious and was shifted to Kazi Ahmed Hospital and thereafter referred to PMC Hospital, Nawabshah, where he was declared dead.

3. It is further the prosecution case that the dead body was thereafter taken away and buried without post-mortem examination. The complainant subsequently approached the learned Civil Judge/Judicial Magistrate-II, Kazi Ahmed, for examination of the dead body, but his application was declined. The order was challenged before the learned Sessions Judge, Shaheed Benazirabad, who allowed the revision and directed examination of the dead body. Consequently, the body was exhumed on 16.09.2025 in the presence of the learned Magistrate, samples were collected and forwarded for chemical analysis. Thereafter, the complainant approached the learned Sessions Court for registration of a criminal case. The matter was transferred to the learned 5th Additional Sessions Judge, Shaheed Benazirabad, who, vide order dated 07.11.2025, directed recording of the complainant's statement under Section 154 Cr.P.C. Consequently, the present FIR was registered on 10.11.2025, i.e. after a considerable interval from the alleged occurrence.

4. After registration of the FIR, the applicant initially sought the concession of pre-arrest bail before the learned Sessions Court. Interim protection was granted but subsequently recalled on 13.12.2025, where after the applicant was arrested. The investigation has since been completed and challan has been submitted before the learned trial Court.

5. Learned counsel for the applicant contended that she is innocent and has been falsely implicated due to a dispute concerning the estate of the deceased. He contended that the prosecution story suffers from substantial infirmities, particularly the unexplained delay in setting the criminal law into motion, the conduct of the alleged eyewitnesses, the absence of any contemporaneous report concerning the alleged motive or threats and the inconclusive nature of the medical and chemical material. He further contended that the applicant is a woman, has no previous criminal history, is in judicial custody and her further incarceration would serve no useful investigative purpose as the case has been challaned and she is no more required for further investigation.

6. Learned D.P.G. Sindh for the State opposed the grant of bail on the ground that the allegation against the applicant concerns the homicidal death of her husband and that the complainant and his brothers have specifically attributed a role to her. He contended

that the offence under Section 302 PPC falls within the prohibitory clause of Section 497 Cr.P.C. and that the allegations should be tested at trial. Complainant present in person has also opposed the grant of bail to the applicant/accused.

7. I have heard the learned counsel for the parties and examined the material available on record with their assistance. At the bail stage, the Court is required to make a tentative assessment of the material and not to undertake a deeper appreciation of evidence or conduct a mini-trial. The question is whether there are reasonable grounds for believing the applicant's involvement in the alleged offence or whether the material gives rise to sufficient grounds for further inquiry within the meaning of Section 497 (2), Cr.P.C. The expression "further inquiry" contemplates a tentative assessment which creates a reasonable doubt regarding the accused's involvement.

8. In the present case, I have noted considerable delay in registration of the FIR. The alleged occurrence took place on 28.05.2025, whereas the FIR was registered on 10.11.2025. Admittedly, the complainant claims to have knowledge of the alleged occurrence from its inception; nevertheless, the criminal law was set into motion after a substantial lapse of time and after proceedings were initiated before the Magistrate and thereafter before the Sessions Court concerning examination of the dead body and registration of the case. Though delay by itself is not invariably fatal to the prosecution, its effect assumes significance where the surrounding circumstances and explanation remain matters requiring evidence. Thus, this aspect cannot be discarded at the bail stage and contributes to the element of further inquiry. The complainant and his brothers are projected as eyewitnesses who, on hearing noise, allegedly reached the house of the deceased at about 03:00 a.m. and witnessed the applicant pressing the neck of the deceased, while the co-accused allegedly stood there armed with lathies. However, despite allegedly witnessing a fatal assault upon their close relative, the prosecution does not show any immediate report to the police or prompt intervention by the alleged eyewitnesses to save the deceased. The deceased was subsequently taken to hospital and thereafter buried. Whether such conduct

affects their credibility is a matter for trial, but at this stage it constitutes a circumstance requiring further examination.

9. Record reflects that the dead body was not subjected to immediate post-mortem examination and was exhumed on 16.09.2025 pursuant to a judicial order. The defence version is that the deceased was a chronic heart patient and had suffered a serious medical episode, where after he was shifted to hospital. This defence cannot, at this stage, be treated as established; nevertheless, in the absence of an immediate post-mortem examination, the precise cause and manner of death require determination through medical evidence. The Court, while deciding bail, need not finally resolve that controversy. Furthermore, the chemical report, as referred to by learned counsel, reflects detection of benzodiazepine in the samples obtained from the deceased. Such detection, by itself, does not establish that the substance was administered by the applicant or that it was responsible for the death. The source, quantity, therapeutic or toxicological effect and causal relationship, if any, with the death are matters requiring expert evidence. Significantly, the FIR does not allege administration of benzodiazepine by the applicant. Consequently, the chemical report, at this stage, cannot be treated as an independent and conclusive circumstance connecting the applicant with the offence.

10. The alleged motive is also based upon an accusation of illicit relationship between the applicant and co-accused Babu, which the deceased allegedly opposed. Such allegation is serious, but motive must ultimately be established through evidence. No contemporaneous complaint concerning the alleged relationship, threats or previous hostility between the deceased and the applicant has been pointed out. The absence of such material does not exonerate the applicant, but its evidentiary effect is a matter for determination at trial and, at this stage, adds to the requirement of further inquiry. It is also relevant that no recovery of any incriminating article from the applicant has been shown to this Court. The prosecution case against her substantially rests upon the ocular account and the surrounding circumstances referred to above. The question whether those circumstances, individually or collectively, establish guilt is to be determined by the learned trial Court after recording evidence. At the present stage, however, the

material does not appear so unimpeachable as to exclude the possibility of further inquiry. The applicant is a woman, and the first proviso to Section 497 (1), Cr.P.C. expressly empowers the Court to release a woman accused even in a case falling within the prohibitory clause. This statutory consideration is to be examined independently along with the other circumstances of the case. The applicant has been in custody since 13.12.2025, the investigation has been completed and the challan has been submitted. She is, therefore, no longer required for any investigative purpose.

11. The gravity of the offence under Section 302 PPC is undoubtedly a relevant consideration, but it cannot, by itself, justify continued incarceration where the available material raises circumstances requiring further inquiry. The Supreme Court has held that even in offences falling within the prohibitory clause, the Court must tentatively assess the nature and strength of the evidence, the degree of involvement and the likelihood of misuse of the concession of bail. Where the material creates doubt regarding the accused's involvement, bail cannot be withheld merely as a measure of punishment. In the circumstances, the case of applicant/accused requires further inquiry.

12. For what has been discussed above, the instant Criminal Bail Application is **allowed**. The applicant, Mst. Marwi @ Gudi, is admitted to post-arrest bail, subject to her furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand only) with PR bond in the like amount, to the satisfaction of the learned trial Court.

13. It is clarified that the observations made herein are tentative in nature and shall not prejudice the case of either party nor influence the learned Trial Court in deciding the case on its merits.

14. These are the reasons for my short order dated 28.08.2026.

JUDGE