

THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail App. No. S – 136 of 2026

[Irshad Ali Kanhar and others v. The State]

Date of hearing : **07.09.2026**

Date of decision : **07.09.2026**

Mr. Ghulam Mujtaba Jakhar, Advocate for the applicants, who are present on interim pre-arrest bail.

Mr. Noor Ahmed Abbasi, Advocate for the complainant.

Mr. Aftab Ahmed Shar, Additional Prosecutor General, for the State.

ORDER

Arbab Ali Hakro, J. – Through this criminal bail application under Section 498, Cr.P.C., the applicants/accused, namely (1) Irshad Ali son of Malhar Khan, (2) Naveed Ahmed son of Malhar Khan, (3) Hub Ali son of Dildar, (4) Hafeezullah son of Dildar Khan and (5) Altaf Hussain son of Hub Ali, all by caste Kanhar, seek confirmation of the interim pre-arrest bail granted to them by this Court vide order dated 16.02.2026 in Crime No.158 of 2025, registered at Police Station Pir Jo Goth, District Khairpur, for offences punishable under Sections 365, 511, 337-H(2), 452, 148 and 149 P.P.C.

2. Learned counsel for the applicants contended that the applicants have been falsely implicated due to prior disputes between the parties. He submitted that the alleged occurrence took place on 07.10.2025, whereas the FIR was registered on 10.11.2025, after a delay of about one month, which, according to him, has not been satisfactorily explained. He further referred to the previous criminal proceedings between the parties, including Crime No.134 of 2025 and Crime No.156 of 2025, as well as the civil litigation between applicant Hafeezullah and Khalid Hussain, the complainant's brother. It was argued that these circumstances disclose prior enmity and require the prosecution's version to be assessed with caution at the bail stage. Learned counsel further submitted that the allegations regarding abduction relate to an alleged attempt which was not completed, and therefore Section 511 P.P.C. has also been applied. He contended that Sections 365 and 452 P.P.C. provide for punishment extending to seven years, and consequently the alleged offences do not

fall within the prohibitory clause of Section 497, Cr.P.C. He relied upon the cases of *Shafqat Najeebullah and 2 others v. The State* (2004 MLD 1866), *Muhammad Asif v. The State and another* (2010 YLR 1948) and *Nishan Ali v. The State* (2025 YLR 2812).

3. Learned counsel for the complainant opposed the confirmation of bail and submitted that the applicants are specifically nominated in the FIR and that the prosecution witnesses have supported the occurrence. He maintained that the applicants, along with other persons, allegedly entered the complainant's house and attempted to take away Shaheer Ahmed, and that the allegations require consideration on the basis of the evidence collected during the investigation.

4. Learned Additional P.G. also opposed the confirmation of bail, submitting that the applicants are nominated in the FIR and that the prosecution witnesses have supported the allegations. He, however, fairly submitted that Sections 365 and 452 P.P.C. carry punishment extending to seven years and, therefore, the offences do not fall within the prohibitory clause of Section 497 Cr.P.C. Regarding Section 511 P.P.C., he submitted that it has been invoked on account of the allegation that the alleged offence under Section 365 P.P.C. remained incomplete and was not consummated.

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

6. The alleged occurrence took place on 07.10.2025, whereas the FIR was registered on 10.11.2025, i.e., after a lapse of about one month. The complainant has explained the delay by stating that he initially approached the competent Court under Sections 22-A and 22-B, Cr.P.C., after which the FIR was registered. The said explanation may be examined at the trial; however, at this stage, the delay remains a circumstance that, when read together with the other material available on record, requires tentative assessment.

7. The record further reflects that the parties were already involved in disputes and criminal proceedings. The FIR itself refers to Crime No.134 of 2025, lodged by the complainant's brother against the accused party. The applicants have also placed Crime No.156 of 2025 on record, lodged by Siraj Ahmed against members of the complainant party, relating to an earlier occurrence. Civil litigation between applicant Hafeezullah and Khalid Hussain, the complainant's brother, has also been brought on record. These circumstances tentatively indicate that the parties were not strangers to each other and that previous disputes subsisted between them.

8. The inquiry report of the DSP Complaint Cell, Khairpur, has also been placed on record by the learned counsel for the applicants, as stated in his statement dated 07.09.2026. The report refers to the previous dispute between the parties and the criminal proceedings arising therefrom. Although the inquiry report cannot be treated as a final determination of the truthfulness of either version, the material contained therein is relevant for the purposes of tentative assessment at the bail stage.

9. The prosecution case, as set out in the FIR, is that the applicants and their co-accused entered the complainant's house and attempted to take away Shaheer Ahmed, but the alleged attempt was not completed. Accordingly, the precise applicability of Section 365 read with Section 511 P.P.C., and the extent of participation attributable to each applicant, require appreciation of the evidence to be led at the trial.

10. As regards Section 511 P.P.C., the provision relates to an attempt to commit an offence where the intended offence is not completed. Its applicability depends on the existence of an act or acts towards the commission of the substantive offence that fall short of its completion. In the present case, the prosecution itself alleges that the alleged taking away of Shaheer Ahmed was not completed. Therefore, the question of whether the ingredients of an attempt under Section 511 P.P.C. are established against each applicant is ultimately a matter for determination on the evidence at the trial.

11. It is also significant that Sections 365 and 452 P.P.C., as presently invoked, provide for punishment extending to seven years. The alleged offences, therefore, do not fall within the prohibitory clause of Section 497, Cr.P.C. The addition of Section 511 P.P.C., a provision relating to attempt, does not, by itself, convert the alleged offences into offences falling within the prohibitory clause. The remaining offences invoked in the FIR also do not attract the said clause.

12. The fact that an offence falls outside the prohibitory clause does not by itself make the grant of bail automatic; nevertheless, it is a relevant consideration, particularly where the record discloses circumstances requiring further inquiry. In such cases, the grant of bail is the rule and the refusal thereof an exception. In **Mudassar Khursheed**¹, a case arising out of offences under Sections 452, 148 and 149 P.P.C., the Supreme Court extended the concession of pre-arrest bail holding that having regard to the punishment provided for the offences charged, the accused would in any event be entitled to post-arrest bail upon dismissal of his pre-arrest bail application. He could not be sent behind the bars for a few days merely at the wish of the complainant. At the stage of bail, the Court is required to make a tentative assessment and is not expected to undertake a deeper appreciation of the evidence.

13. In the present case, the delay in registration of the FIR, the admitted background of disputes between the parties, the existence of previous criminal proceedings and civil litigation, the material contained in the inquiry report, the allegation of an incomplete attempt, and the fact that the offences do not fall within the prohibitory clause of Section 497, Cr.P.C., are circumstances that, cumulatively, call for further inquiry. A comparable combination of circumstances, a delay in setting the law in motion, coupled with offences falling outside the prohibitory clause, was held by the Supreme Court in **Munawar Bibi**² to bring the case squarely within the ambit of Section 497(2) Cr.P.C., and the ad-interim pre-arrest bail granted therein was accordingly confirmed.

¹ *Mudassar Khursheed v. The State* (2025 SCMR 1613)

² *Munawar Bibi v. The State* (2023 SCMR 1729)

14. It is further noted that the applicants have remained on interim pre-arrest bail pursuant to the order dated 16.02.2026. The material placed before the Court does not indicate any misuse of the concession granted to them or any conduct on their part warranting withdrawal of the interim protection.

15. In view of the foregoing discussion, I am of the tentative view that the case of the applicants calls for further inquiry into their guilt within the contemplation of Section 497(2) Cr.P.C. Consequently, the instant bail application is **allowed**, and the interim pre-arrest bail granted to the applicants vide order dated 16.02.2026 is hereby confirmed on the same terms and conditions.

16. The observations made herein are tentative and shall not prejudice either party at the trial.

The bail application stands **disposed of** in the above terms.

J U D G E

Abdul Basit