

THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Present:

Mr. Justice Abdul Mobeen Lakho

Mr. Justice Zulfiqar Ali Sangi

Criminal Bail Application No.D-142 of 2026

Criminal Bail Application No.S-165 of 2026

Applicant(s): Shoab [Criminal Bail Application No.S-142 of 2026] and Shauban Ali [Criminal Bail Application No.S-165 of 2026] through M/s. Ghulamullah Chang, Nabi Bux Saand, Shahed Mirbahar and Muhammad Achar Jalbani, Advocates.

Respondent: The State through Ms. Rameshan Oad, D.P.G. Sindh along with Inspector Kubhar Khan PS LTD Hyderabad, Inspector Asif Hayat SHO CTD Hyderabad.

Date of hearing: 13.08.2026.

Date of order: 13.08.2026.

ORDER

ZULFIQAR ALI SANGI, J: - By this common order, we propose to dispose of the captioned post-arrest bail applications filed by the applicants/accused, namely **Shoaib and Shauban Ali**, as both applications arise out of one and the same crime, being **Crime No.90 of 2025**, registered at Police Station Mirpur Bathoro, for offences punishable under Sections **324, 427, 109, 120-B, 121-A, 123-A, 505 and 153-A, P.P.C., read with Sections 6/7 of the Anti-Terrorism Act, 1997**. It is pertinent to note that the earlier bail applications preferred by the applicants were dismissed by the learned Anti-Terrorism Court, Hyderabad, vide common order dated **17.03.2026**. The applicants have, therefore, approached this Court seeking post-arrest bail on the basis of the material presently available on record and the circumstances which, according to them, bring their case within the ambit of further inquiry contemplated under Section 497(2), Cr.P.C.

2. Briefly stated, the prosecution case, as reflected in the FIR, is that on 14.04.2025, complainant ASI Shams, along with his subordinate police officials, proceeded on patrol duty in Government vehicle bearing Registration No. SPE-737. At about 2130 hours, while the police party was present on Sujawal-Badin Link Road near Zaman Shah, they

allegedly noticed a tanker moving ahead of them. It is alleged that, upon hearing the sound of firing, the police officials observed three unidentified persons riding a black-coloured 125 motorcycle and allegedly firing at the driver of the tanker. According to the complainant, upon noticing the police party, the alleged assailants took advantage of darkness and fled from the scene. The police party allegedly attempted to pursue them but could neither apprehend any of the assailants nor trace the tanker, its driver or owner. Consequently, the FIR was initially registered against three unknown persons for an offence under Sections 324 and 34, P.P.C.

3. Learned counsel for the applicants has vehemently contended that neither of the applicants was nominated in the FIR and that no specific role whatsoever was attributed to either of them at the time of registration of the case. It is further contended that the applicants were not apprehended from the place of occurrence, nor were they identified by the complainant or any member of the police party at the spot. According to learned counsel, the applicants were subsequently implicated in the case after they allegedly disappeared/ were abducted on 24.04.2025, while returning from Sukkur after attending the Babarloi protest. Their fathers approached the concerned authorities seeking their recovery, and ultimately Constitutional Petition No.D-745 of 2025 was instituted before this Court in respect of their alleged disappearance. Learned counsel submits that the subsequent implication of the applicants is the product of investigation and is not supported by any independent material connecting them with the occurrence in question. It is further argued that the investigation has already been concluded, the applicants are no longer required for investigative purposes, and the report under Section 173, Cr.P.C. has been submitted before the learned Trial Court. Hence, their continued incarceration would serve no useful purpose.

4. Conversely, learned D.P.G. Sindh appearing for the State has opposed the applications. It is contended that during investigation one Halar was arrested and, according to the prosecution, he disclosed the names of the present applicants and implicated them in the commission of the alleged offences. Learned D.P.G. further submits that the prosecution witnesses have supported the prosecution version and that sufficient material has been collected during investigation connecting the

applicants with the alleged occurrence. She has, therefore, argued that the offences attributed to the applicants are grave and serious in nature, fall within the prohibitory clause of Section 497, Cr.P.C., and that the applicants do not deserve the concession of bail.

5. We have heard learned counsel for the applicants as well as learned D.P.G. Sindh for the State and have carefully examined the available record with their assistance. At the stage of bail, the Court is required to undertake a tentative assessment of the material collected by the prosecution and is not expected to conduct a meticulous examination or deeper appreciation of the evidence, which remains the exclusive domain of the Trial Court. The limited question requiring determination at this stage is whether the material available on record constitutes reasonable grounds for believing that the applicants are guilty of the offences alleged against them or, conversely, whether their case is one which calls for further inquiry within the meaning of Section 497(2), Cr.P.C.

6. In the case at hand, certain aspects of the prosecution case assume considerable significance. The applicants were admittedly not nominated in the FIR. The FIR, in its original form, was registered against three unknown persons. The complainant and accompanying police officials were admittedly present at or near the place of occurrence and claimed to have seen the assailants. It is also the prosecution's own case that the alleged assailants were visible in the headlights of the police vehicle and that their faces were not covered. Nevertheless, none of the applicants was identified or nominated at the earliest available opportunity, nor was either of them apprehended from the place of occurrence or during the alleged pursuit. The identity of the persons allegedly involved in the occurrence, therefore, remained unknown at the time of registration of the FIR. Their subsequent identification or implication during investigation requires cautious examination, particularly where the initial version did not contain any clue regarding their identity.

7. The subsequent introduction of the applicants in the case is stated to have been made on the basis of the alleged disclosure of co-accused Halar, who, according to the prosecution, was arrested by the CTD and thereafter implicated the present applicants. At this stage, however, the prosecution has not been able to point out any sufficiently independent

and tangible piece of evidence, apart from the subsequent disclosure and statements recorded during investigation, which directly connects either applicant with the actual firing incident. No recovery of weapon, motorcycle, ammunition or any other incriminating article attributable to either applicant, having a nexus with the present occurrence, has been brought to our notice. Likewise, no direct ocular account identifying either applicant as one of the three persons allegedly riding the motorcycle at the relevant time has been pointed out. It is settled that while a disclosure made by an accused during investigation may lead to further investigative steps, its evidentiary worth, particularly insofar as it implicates a co-accused, has to be assessed in accordance with law and cannot, by itself and without corroborative material, be treated as conclusive proof of guilt at the bail stage. The Court is, therefore, required to examine whether such material is supported by independent incriminating circumstances. In the present case, such corroborative material is not apparent from the record placed before us.

8. The chronology of events also requires consideration. The alleged occurrence took place on 14.04.2025, whereas the applicants claim that they were apprehended/abducted on 24.04.2025, while returning from Sukkur after attending the Babarloi protest. Their fathers thereafter approached the relevant authorities and proceedings were initiated before this Court in the form of Constitutional Petition No.D-745 of 2025, concerning their alleged disappearance. The applicants were subsequently shown arrested in another case registered by the CTD and were thereafter connected with the present crime. We are conscious that the truth or otherwise of the applicants' assertion regarding their alleged unlawful detention/disappearance is ultimately a matter to be determined on the basis of evidence and cannot be conclusively adjudicated upon at the bail stage. Nevertheless, the contemporaneous circumstances and proceedings relied upon by the applicants cannot be completely disregarded while determining whether the material presently available against them furnishes reasonable grounds of guilt or, instead, makes their case one of further inquiry.

9. Another material circumstance is that the alleged occurrence was, according to the prosecution itself, witnessed by the complainant ASI and the accompanying police officials. They allegedly observed the assailants from a distance of approximately 100 feet/100 paces, with the

assistance of the headlights of the police vehicle. Despite such alleged opportunity of observation, the applicants were neither nominated in the FIR nor apprehended at or near the place of occurrence. This aspect assumes greater significance because the FIR was lodged against unidentified persons and the identity of the alleged assailants was not known to the police at that time. Furthermore, the prosecution has, according to the material presently available, not been able to trace the alleged tanker, its driver or owner, who would ostensibly have been the most immediate person affected by the alleged firing. We are not suggesting that the non-production or non-tracing of such person, by itself, is sufficient to discard the prosecution case. However, when this circumstance is considered cumulatively with the non-nomination of the applicants, their subsequent implication, absence of identification at the spot, absence of a specific role in the original version and lack of any recovery connecting them with the occurrence, the prosecution case, at least at this tentative stage, becomes a matter requiring further inquiry.

10. We have also considered the applicability of Sections 6 and 7 of the Anti-Terrorism Act, 1997. No doubt, the allegations are serious and the mere assertion of an offence having been committed in a particular manner does not, by itself, determine the ultimate question of guilt. For attracting the provisions of the Anti-Terrorism Act, the prosecution is required to demonstrate the requisite ingredients prescribed by law. At the present stage, the material brought before us does not, with sufficient clarity, disclose any specific act or design attributable to either applicant which, on a tentative assessment, establishes the requisite nexus with the object or intent contemplated by the anti-terrorism provisions. The allegation of firing, standing alone, cannot invariably be treated as synonymous with an act of terrorism without examining the statutory ingredients and the surrounding circumstances of the occurrence. We, however, make it clear that we are not recording any final opinion regarding the applicability of the Anti-Terrorism Act or the jurisdiction of the learned Trial Court. Such questions shall be determined by the competent Court in accordance with law, upon appreciation of the evidence. At this stage, the apparent uncertainty surrounding the applicants' specific connection with the alleged terrorist design is, nevertheless, a relevant circumstance for the limited purpose of deciding their entitlement to bail.

11. It is true that the offences alleged against the applicants are serious in nature and that some of the offences fall within the prohibitory clause of Section 497, Cr.P.C. However, the mere fact that an offence falls within the prohibitory clause does not dispense with the statutory requirement that the prosecution must demonstrate reasonable grounds for believing the accused to be guilty. The seriousness of the allegation, though relevant, cannot substitute the evidentiary requirement prescribed by law.

At the bail stage, the Court must maintain a balance between the seriousness of the accusation and the constitutional and statutory principle that an accused is presumed innocent until proved guilty. Where the material available on record, when assessed tentatively and cumulatively, does not furnish reasonable grounds of guilt and instead gives rise to circumstances requiring further probe into the accused's connection with the alleged occurrence, the case falls within the ambit of Section 497(2), Cr.P.C.

12. It is also significant that the investigation has already been completed and the challan/report under Section 173, Cr.P.C. has been submitted. Thus, the continued custody of the applicants is not shown to be necessary for the purposes of investigation, recovery or any other investigative requirement. Their detention cannot be permitted to assume the character of punishment before conviction. The apprehension, if any, regarding their attendance at trial can adequately be addressed through appropriate bail conditions and surety.

13. Upon a tentative assessment of the entire material, without expressing any final opinion on the merits of the case, we are of the considered view that the prosecution has not, at this stage, been able to establish reasonable grounds connecting the applicants directly with the occurrence so as to exclude the applicability of Section 497(2), Cr.P.C. The following circumstances, considered cumulatively, weigh in favour of further inquiry: **(i)** the applicants were not nominated in the FIR; **(ii)** the FIR was initially lodged against three unknown persons; **(iii)** no applicant was apprehended at or near the place of occurrence; **(iv)** no identification of either applicant was made at the earliest opportunity despite the alleged availability of light and opportunity for observation; **(v)** their subsequent implication is primarily attributed to the alleged disclosure of co-accused Halar; **(vi)** no recovery connecting either applicant with the occurrence has been shown; **(vii)** no specific role was attributed to them

in the original version; and **(viii)** the investigation has already been completed and the final report under Section 173, Cr.P.C. has been submitted.

14. For the foregoing reasons, and without expressing any opinion which may prejudice the case of either side at trial, we are satisfied that the applicants have succeeded in making out a case of further inquiry within the meaning of Section 497(2), Cr.P.C. Accordingly, both the captioned bail applications are allowed. Consequently, the applicants/accused **Shoaib and Shauban Ali** are admitted to post-arrest bail, subject to their furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand only) each, with P.R. bonds in the like amount, to the satisfaction of the learned Trial Court.

15. Before parting with the matter, it is clarified that the observations made herein are purely tentative in nature and have been recorded solely for the purpose of deciding the present bail applications. Nothing contained in this order shall be construed as an expression of opinion on the ultimate merits of the prosecution case. The learned Trial Court shall proceed with the trial strictly in accordance with law and shall decide the case independently, on the basis of the evidence brought on record, without being influenced by any observation made herein.

16. These are the reasons for our short order dated **13.08.2026**.

JUDGE

JUDGE

Abdullahchanna/PS