

ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE.
(JUDICIAL DEPARTMENT)

Crl.Misc.No.53550-B/2025

Mirza Yahya Baig vs The State, etc.

Crl.Misc.No.42305-B/2025

Mirza Tahir Baig vs The State, etc.

S.No. of order/ Proceedings	Date of order/ Proceedings	Order with signature of Judge, and that of parties of counsel, where necessary.
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30.09.2025 S. M. Zeeshan Mirza, Advocate with petitioners.
Mr. Muhammad Asif Ashraf, Deputy Prosecutor
General with Murtaza Sub-Inspector.
Hafiz Rehman Aziz, Advocate for the complainant.

These are second pre-arrest bail applications on behalf of respective petitioners; earlier (Crl.Misc.No.7907-B/2025) was dismissed as withdrawn vide order dated 27.02.2025, because at that time their arrest was deferred till the result of reports qua comparison of thumb impressions and signatures on the disputed documents.

2. Petitioners Mirza Yahya Baig and Mirza Tahir Baig through their respective bail petitions i.e., Crl.Misc.No.53550-B/2025 and Crl.Misc.No.42305-B/2025 seek pre-arrest bail in case FIR No.1966 dated 02.12.2024 for offences under sections 420, 468, 471 of Pakistan Penal Code 1860 (“the PPC”) registered at police station Narang, District Sheikhpura.

3. Mirza Mazhar Baig, an overseas Pakistani living in Canada maintains a piece of land measuring Nine (9) Acres at Mouza Ghorian Mughlaan, Tehsil Muridkay, District Sheikhpura which was on lease with Mirza Yahya Baig, accused/petitioner who refused to return the landed property in year 2024. Upon which it stands disclosed that he has prepared an ante-dated forged agreement to sell dated 09.05.2017 attested by witnesses including Mirza Tahir Baig, accused/petitioner, and then obtained an injunctive order from the concerned civil court by filing a suit for specific performance. Mirza Mazhar Baig got lodged present FIR through his attorney namely Muhammad Usman Baig and claimed that on 09.05.2017, he was in Canada as reflected from entry and exit stamps on his passport.

4. Learned counsel seeks bail for the petitioners merely on two grounds that the FIR was lodged through attorney which course is not recognized in law and in support whereof he relied on cases reported as “SONIA SHARIEF Versus ADDITIONAL DISTRICT AND SESSIONS JUDGE and others” (2024 CLC 1170); “KHALID MEHMOOD and 3 others Versus SAFDAR IQBAL and another” (2017 P Cr. L J 1104); “GHAZANFAR ALI Versus M. ZAHID HUSSAIN and others” (PLD 2011 Lahore 179). Secondly, that the matter in dispute is pending before the civil court which has the ultimate jurisdiction for the determination of civil rights of the parties and before that no criminal action can be initiated. On the other hand, Learned Deputy Prosecutor General and learned counsel for the complainant opposed the bail on the ground that FIR has legally been registered and forgery on agreement to sell stands proved by the report of PFSA, whereas civil and criminal proceedings can go side by side.

5. While taking the objections of learned counsel for the petitioners, it is observed that the second objection is not of worth at this stage of the proceedings because of an approved jurisprudential regime that civil and criminal proceedings can go side by side, until criminal proceedings are ordered to be stayed till the decision of civil litigation. So far as the first objection is concerned, suffice it to observe that recitals of FIR are in oral account of Mirza Mazhar Baig owner/Principal, and name of attorney namely Muhammad Usman Baig, is mentioned as informant only which does not offend the spirit of section 154 of Code of Criminal Procedure 1898 (“the Code”) as it identifies an informant only and not the complainant. However; Form No. 24.5 (1) of Police Rules 1934 accommodates both informant and the complainant; therefore, contention of counsel somewhat loses its force. For instance, if somebody requests others to pass on information to police that he/she is being subjected to certain offence, would that passing of information be not considered as first information report. It is trite that any person authorized or bound by a public duty including a police officer can report the crime or commission of any offence which is not merely a personal wrong but a public wrong too that violates the public law. This Court in a case

reported as “Ch. MUHAMMAD ASLAM and others v. SESSIONS JUDGE, MUZAFFARGARH and others” (2020 P Cr. L J 742) demarcated a distinction between the personal wrong and public wrong held for the competency of any person to move the legal machinery in following words:

As noted above, wrongs are divisible into two sorts or species, (i) personal wrong and (ii) public wrong. The crime is a public wrong, a breach and violation of public right affects the whole community. The crime is deemed by law to be a harm to the society in general. Irrespective of the fact that its immediate victim is an individual, therefore, even in absence of availability of any private person to be a complainant, the State functionaries himself can report a crime for bringing to book the person who had committed a crime. It may be pointed out that, any individual cognizant of the commission of crime, can put the machinery of law into motion. In doing so the individual, is not under any legal obligation to show that personally he is aggrieved of the Act complained of. This is because that the commission of crime is deemed not only a wrong against the individual but the same is deemed to be a crime against the society. The object behind putting the machinery of law against a person accused of commission of any criminal wrong is to get the person punished for the act illegal he had done. The punishment may be corporeal or in fine or in both.

The above developed jurisprudence is somewhat embodied in the Code by virtue of which the general public is bound by section 44 to report the commission of certain offences listed therein; similarly, Section 45 also requires the village-headman, accountants, landholders and others to report certain matters, that does include commission of any non-bailable offence. This pattern is also supported by Chapter 24 of the Police Rules 1934.

6. The scheme of criminal law manifestly, makes it clear that basic purpose of FIR was not meant to decide guilt or innocence but to activate the law enforcing agencies to immediately move for collection/preservation of evidence. In cases reported as “SKINDAR Versus the STATE and another” (2006 SCMR 1786); “HALEEM KHAN Versus The STATE” (2022 P Cr. L J 497); “MUHAMMAD PARYAL Versus The STATE” (2019 YLR 2316); “MUHAMMAD ILYAS ASHRAF and 3 others v. AITZAZ AHMAD, MAGISTRATE 1ST CLASS, GUJRANWALA and 2 others” (2004 Y L R 1299); “ATTA ULLAH versus THE STATE” (PLD 2000 Lahore 364); “RIAZ AHMAD and 3 others versus THE STATE” (PLD 1994 Lahore 485); “REHMAN and

others Versus The STATE” (PLD 1968 Lah 464); “*EMPEROR V. KHWAJA NAZIR AHMAD*” (AIR 1945 (PC) 18), the Superior courts have held many times that criminal machinery can be set into motion by any person irrespective of his being the aggrieved or victim of the crime. This Court once again with in-depth study on the subject while confronting “*Lalita Kumari Versus Govt. of U.P. & Ors.*” (AIR 2014 Supreme Court 187) has also discussed different modes and manners for reporting the crime to police, its duty to respond and regulate the criminal process and thus, held that FIR through any person is legal. Case approved for reporting titled “*Muhammad Ahsan versus The State and 3 others*” (2024 LHC 6439) is referred in this respect.

7. Now see as to whether FIR can be lodged through an attorney; but before that it is essential to understand the concept of power of attorney. Power of attorney gives one or more people the right to act as your agent when you’re unavailable, incapacitated, or otherwise indisposed. The attorney in charge possesses broad or limited authority to act on behalf of the principal. In Punjab, Pakistan by virtue of section 2 of the **Powers of Attorney Act, 1882**, the execution of any document mentions therein on behalf the principal by attorney has a legal effect. On legal side, Section 182 of **the Contract Act, 1872** defines the connotations of Principal and Agent in following manner:

182. "Agent" and "principal" defined. – An "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal".

Section 188 of the Contract Act, 1872 gives the authority to the agent in these words:

188. Extent of agent's authority. – An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

Illustrations

(a) A is employed by B, residing in London, to recover at [Karachi] a debt due to B. A may adopt any legal process

necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

The visit of supra legal provisions and concept of power of attorney make it convenient for the Attorney to do every **lawful thing** which is necessary for the discharge of the authority or conduct of the act, for which he was appointed; it may also include the situation when any forgery or offence is committed by any person relating to affairs of the business for which the attorney was appointed. Above concept is also supported by some legal precedents as well. The Sindh High Court in a case reported as “AMANULLAH KHAN v. THE STATE” (2011 P Cr. L J 774) has held as under;

“On the question of lodging of F.I.R. by the attorney of the complainant is devoid of any merit. It is now a settled proposition that every member of the public has a right to set the wheels of criminal prosecution in motion and there is no embargo for any person to lodge a complaint or to be personally aggrieved.”

This Court in a case reported as “Mian AMER SAEED versus STATION HOUSE OFFICER” (2011 Y L R 1567) has held for the proposition in following terms:

There is no weight in the argument that application under sections 22-A and 22-B, Cr.P.C. could not be filed by respondent No.2 through his special attorney. It is not requirement of law that complaint must be filed by the person who is victim of any offence. An information regarding commission of an offence can be laid before the police by any person, before whom such offence has been committed by any person. The petitioner has not denied issuance of the cheques, which have been dishonoured by the bank and act of the petitioner, prima facie, constitutes an offence falling under section 489-F, P.P.C. Filing of a suit for recovery of the amount of the dishonoured cheques is no bar against initiation of criminal proceedings against the petitioner under section 489-F, P.P.C., as civil and criminal proceedings can be initiated side by side.

Delhi High Court in a case reported as “Jasbir Singh Versus Deputy Commissioner Of Police Crime Branch (Eow)” [(2013(9) AD(Delhi) 284): (2013(138) DRJ 683): (2013(4) JCC 2638): (2014(12) R.C.R.(Civil) 1461)], refused to quash the FIR registered on the complaint of a power of attorney holder, and held as under;

“In the present case also, the provisions of the Cr.PC. apply in respect of the offences mentioned in the FIR and merely because the complainants, who are both residents of Canada are not in a position to personally travel to India to lodge their complaint and pursue the

same with the police cannot be a ground to seek quashing of the FIR,
registered on the complaint of their Power of Attorney holder.”

In a case reported as “Vinita S. Rao Versus M/s. Essen Corporate Services Pvt. Ltd. and another” (2015 AIR (SC) 882), Supreme Court of India in a case relating to complaint under Section 138 of the Negotiable Instruments Act permitted the power of attorney holder to file complaint despite that under said law complaint could only be filed by the payee. The observations are as under;

The Power of Attorney holder can depose and verify on oath before the Court in order to prove the contents of the complaint. However, the power of attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the said transactions.

In a case reported as “M/s. Shankar Finance & Investments Versus State of Andhra Pradesh & Ors.” (2009 AIR (SC) 422), Supreme Court of India held that it is not necessary that proprietary concern should file complaint under Sections 138 and 142 of the Negotiable Instruments Act, on dishonor of cheque, rather complaint in writing by power of attorney holder in name of payee is maintainable.

8. The cases relied upon by the learned counsel for the petitioners mainly discuss the initiation of proceeding by the attorney before the Court and in such cases the respective courts declared such act of attorney as unauthorized, but such judgments could not discuss the concept of “Pleader” introduced by the Code to meet such situation. We know that aggrieved and accused, are the two parties in a criminal litigation whose representation in the criminal process is regulated under the Code through the institutions of ‘Prosecutor’ and ‘Pleader’ respectively. Pleader always represents a private party before the Court. Commission of an offence is considered an act not only against an aggrieved person but State too whose law is violated; therefore, State is represented by Prosecutor whereas complainant (if wish) and the accused are represented through Pleader. What the concept ‘Prosecutor’ and ‘Pleader’ implies is reflected from the definition of these two terms as mentioned in the Code. As per section 4 (t) of the Code

“**Public Prosecutor**” means “any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor and any person conducting a prosecution on behalf of the

State in any High Court in exercise of its original criminal jurisdiction”

Later prosecutor was defined through the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2006 with different designations for prosecution before District Courts, Special Courts and Superior Courts. The concept of prosecution through attorney is also in place; as per section 495 of the Code, Court can permit any person other than Public Prosecutor to conduct prosecution, and that person either personally or through pleader can conduct prosecution.

9. Now who is the ‘Pleader’ in a criminal process has been defined in Section-4 (r) of the Code as under;

“Pleader.” “Pleader” used with reference to any proceeding in any Court, means a pleader or a mukhtar, authorized under any law for the time being in force to practice in such Court, and includes (1) an advocate, a vakil and an attorney of a High Court so authorized, and (2) any other person appointed with the permission of the court to act in such proceeding:

Above definition shows that for a Mukhtar, Vakil, Advocate or Attorney, the word ‘pleader’ shall only be used in relation to his representation in any proceedings before the Court. Per above definition, Pleader and Mukhtar must be authorized by law to practice in such Court, which includes an authorized advocate, vakil and an attorney of High Court. The word “advocate” though has been defined in the Pakistan Legal Practitioners and Bar Councils Act, 1973, Rules 1976 and Punjab Bar Council Rules 2023 but “Mukhtar”, “Vakil” and “Attorney” have not been defined. By tracking their history, it transpires that a **“Mukhtar”** is an authorized person who can act on behalf of another in legal matters, and their authority to practice in courts depends on the specific jurisdiction and the type of "Mukhtar Nama" or Power of Attorney they hold. Historically, a mukhtar who passed the required exams could be authorized to practice, but with restrictions on their roles. They typically practiced in subordinate criminal courts and were considered inferior to pleaders, who practiced in civil and revenue courts. Modern legal systems have largely replaced the old "mukhtar" and "pleader" roles with the more comprehensive role of an advocate. Whereas concept of an **“Advocate”** originated in ancient Rome and Greece, where orators

pleaded cases in courts. It later became more formalized in England around the 13th century, with distinct roles for pleaders and attorneys. The profession was further professionalized and regulated under British Rule in India, with various acts and councils established to set standards for legal practitioners. Like, the Legal Practitioners Act, 1846 (I of 1846); the Legal Practitioners Act, 1853 (XX of 1853); the Legal Practitioners Act, 1879 (XVIII of 1879); the Legal Practitioners Act, 1884 (IX of 1884); the Legal Practitioners (Amendment) Act, 1908 (I of 1908). However, ancient origins can be classified in to two categories as under;

Ancient Greece: The first lawyers were orators who pleaded cases in public assemblies.

Ancient Rome: Initially, advocates were rhetoricians, not legal experts. A class of legal specialists called jurisconsults emerged, who were wealthy amateurs that gave legal opinions but did not make their living from law. Emperor Claudius legalized advocacy as a profession, allowing advocates to be paid for their services, though he also imposed a fee ceiling. Later, a more subordinate role, the procurator, gained importance as legal procedures became more reliant on written documents.

English development. The legal profession became more established during the reign of King Edward I (1272–1307). Early lawyers included two types. **Serjeants**; Pleadors who represented clients in court and **Attorneys** who handled procedural matters, though they also started appearing on behalf of clients over time. Similarly, **Indian evolution** encompasses “**ancient and Medieval India**” when legal roles were filled by Hindu Pandits and Muslim legal advisors (Muftis) who were knowledgeable in traditional laws. Under **British Rule**, the establishment of British courts in the 17th century led to a more organized system, with practitioners like attorneys and vakils. The Legal Practitioners Act of 1879 consolidated laws and established qualifications for various legal roles like Pleadors, Vakils, and Mukhtars. The Indian Bar Councils Act of 1926 gave the legal profession more self-governance. In **Post-independence** era, the Advocates Act of 1961 was enacted to create a unified and autonomous legal profession with Bar Councils at the national and State levels. Whereas Pakistan promulgated “the Legal Practitioners and Bar Councils Act” in year 1973, through which respective Bar Councils issue practicing licence to advocates. The term “Vikal” is

broad than an advocate yet it is now used as synonym for an advocate whereas “Attorney of High Court” is the Advocate who is entitled to practice in such court.

10. Now adverting back to the definition of ‘Pleader’, it is observed that definition also includes the following as well;

“(2) any other person appointed with the permission of the court to act in such proceeding”

This is the window left at the discretion of the Court creating a room for accommodating the ‘attorney’ of any person (accused or complainant) to be appointed as pleader in any proceedings. In the Code at 22 occasions, pleader has been allowed to act for another person in different proceedings. (Sections 116, 144, 145, 147, 148, 204, 340, 353, 360, 361, 366, 419, 421, 422, 423, 428, 439, 440, 493, 495, 505 and 540A are referred). Though ‘pleader’ now in organized form is an advocate who enters appearance on behalf of a party by filing power of attorney, but the Court cannot insist the party about hiring of an advocate in each and every case rather can permit any person to act as pleader for any party. Some instances with relevant case laws are referred here. Co-accused can act as pleader if so permitted; “Sarsibala Dawan and others v. State (Patna)” (AIR 1962 Pat 244). Private person must get the prior permission; “MUHAMMAD AYUB Versus THE STATE” (1991 P Cr. L J. 2425). Power of attorney holder cannot become pleader unless he secures permission of the Court; “T.C. Mathal v. District & Sessions Judge, Thiruvananthapuram, (SC)” (AIR 1999 S.C. 1385). The discretion of the Court in permitting any person to appear as “pleader” must be exercised judicially with due regard to the interest of the party engaging him; “Harishanker Rastogi v. Girdhari Sharma, (SC)” (AIR 1978 S.C. 1019). There are some more instances in our legal system where proceedings are allowed to be regulated through a person holding power of attorney. A man who is not in Pakistan can apply for protective bail through his attorney to join criminal process in a case registered against him; reliance in this respect is placed on case reported as “MALIK AZMAT ULLAH Versus FEDERATION OF

PAKISTAN through SECRETARY, MINISTRY OF INTERIOR and 10 others” (2023 P Cr. L J 290).

11. Though the precedents referred by learned counsel for the petitioners speak that “criminal administration of justice recognizes only those as a witness or complainant who either have seen, heard or at least perceived any fact towards the offence, hence an attorney being not speaking of his own knowledge, would not fall within the meaning of witness/complainant”. With utmost respect, if a fact is capable of being heard which discloses a commission of offence and is heard by any person like attorney, how he could be precluded to become complainant or witness before the Court, when Article 71 of the Qanun-e-Shahadat Order 1984 recognizes it as evidence. In the criminal regime of law, sometimes person who is not the eyewitness though is closely related to the deceased or injured when heard about commission of offence, not only becomes the complainant, but can give evidence on behalf of an eyewitness if he is unable to appear before the Court. Third Proviso to Article 71 of Qanun-e-Shahadat Order 1984 authorizes the witness to appoint his attorney to depose on his behalf before the court. Said proviso is as under;

“Provided further that, if a witness is dead, or cannot be found or has become incapable of giving evidence, or his attendance cannot, be procured without an amount of delay or expense which under the circumstances of the case the Court regards as unreasonable, a party shall have the right to produce “shahada ala al shahadah” by which a witness can appoint two witnesses to depose on his behalf, except in the case of Hudood.”

Similarly, sections 205 and 540A of the Code also facilitate the accused to appear before the Court through his pleader in a criminal case, and as per definition of pleader he could be an attorney of person as well subject to permission by the Court. Appearance through pleader in a situation when accused is to go abroad for earning livelihood was also sanctioned by this Court through case reported as “*Rai MUHAMMAD ASLAM Versus ADDITIONAL SESSIONS JUDGE and others*” (PLD 2025 Lahore 405).

12. Even there is no apparent bar for filing of private complaint by any person that does include an attorney, before a Magistrate with a view to his taking cognizance of an offence committed within his area of jurisdiction, in the light of section 4(h) read with section 190 of the

Code except in offences mentioned in section 195, 196, 196A, 197, 198 198A, 199, 199A and 199B of the Code or if any prohibition is contained in any special law. Such view is also supported by a judgment of Supreme Court of India reported as “Vishwa Mitter Versus O.P. Poddar” (1984 AIR (SC) 5).

13. It is desirable to pin that criminal administration of justice cannot dispense justice through a judge or court alone, rather it has introduced certain measures which may include appointment of Bailiff (u/s 491,552 of the Code), appointment of Jury (Section 138 of the Code), local inquiry (Section 148 of the Code) and Commission for the examination of witnesses (Section 503 of the Code), which impliedly means that court also acts through attorney. Thus, concept is inherent in criminal justice system. Moreso, Mirza Mazhar Baig is an overseas Pakistani and Government is also committed to attend the genuine grievances of overseas Pakistanis with a speedy way out to save their property and life of their children. In this respect “The Punjab Overseas Pakistani Commission Act 2021” has also been promulgated. Under section 7 of such Act, Overseas Commissioner is required to process the complaint of an overseas Pakistani to the concerned government agency or the committee for redressal. In such situation understanding is clear that for follow up, an attorney of overseas Pakistani can join the proceedings.

14. Depending upon the above discussion, it is held that an attorney of a person can lodge an FIR with the police and can also initiate criminal proceedings before a Court for the interest of his Principal. If the proceedings before the court were initiated by the principal, and he becomes unavailable or incapacitated, the attorney can also continue it on his behalf with the permission of the Court. Court should also encourage such practice keeping in view the hardships involved in the case to reduce delays in the criminal process which would restore the confidence of public on the courts of law for acquisition or regulation of their rights. There is no doubt that Court shall decide the matter on production of relevant evidence only that can also be recorded by using modern techniques like through online

applications. Misuse of process by attorney, through registration of false FIR or filing of private complaint, can well be met through sound remedial measures including action pursuant to sections 181, 182, 211, 213 and 250 of the Pakistan Penal Code 1860. Thus, contention of learned counsel for the petitioners that FIR cannot be registered through attorney is nothing but farce.

15. On merits, case against the petitioners has been attended; the alleged agreement to sell was sent to PFSA for comparison of signatures of Mirza Mazhar Baig over it with his authentic signatures available at different documents, which returned with an expert opinion as under;

“After careful examination and comparison of Questioned Signatures on item no. 1.1 using Video Spectral Comparator (VSC-6000, Software version 6.6), it is concluded that Questioned Signatures on item no. 1.1 **are non-genuine** and have been produced by manipulative technique such as tracing.

The above report coupled with the fact that both the petitioners during investigation were found involved in commission of offence. They were in league with each other and have prepared a forged agreement to sell to usurp the property of Mirza Mazhar Baig. Thus, petitioners have no case on merit. This is pre-arrest bail and there is no apparent malafide against the petitioners. Their false implication is not spurred out from the record. The concession of pre-arrest bail is an extraordinary relief, which is meant only for innocent persons where the intended arrest of an accused is found to be actuated with *malafide* on part of the complainant or the police. I have not seen any malice or ulterior motive on part of the complainant to falsely implicate petitioners, therefore, they are not entitled to the extra-ordinary relief of pre-arrest bail as claimed for. Reliance is placed on a case reported as “GULSHAN ALI SOLANGI and others versus The STATE through P.G. Sindh” (2020 SCMR 249). Reliance is further placed on the case reported as “AHTISHAM ALI versus The STATE” (2023 SCMR 975), wherein it has been held that:-

“It is well settled exposition of law that the grant of pre-arrest bail is an extraordinary relief which may be granted in extraordinary situations to protect the liberty of innocent persons in cases lodged with mala fide intention to harass the person with ulterior motives. By all means, while applying for pre-arrest bail, the petitioner has to satisfy the Court with regard to the basic conditions quantified under section 497 of the Code of Criminal Procedure, 1898 (“Cr.P.C”) vis-à-vis

the existence of reasonable grounds to confide that he is not guilty of the offence alleged against him and the case is one of further inquiry.”

16. Thus, petitioners could not satisfy the court that they are entitled to be granted pre-arrest bail within the contemplation of sections 497/498 of the Code. In view of the above, both these petitions stand **dismissed** and ad-interim pre-arrest bail already granted to the petitioners is hereby **recalled**.

17. Before concluding this order, the Court acknowledges with appreciation the valuable assistance rendered by Mr. Balal Munir, Research Officer, whose diligent efforts enabled the Court to access the latest available law on the subject.

Muhammad Amjad Rafiq
Judge.

Approved for Reporting

Judge

Signed on 10.10.2025
Javed*