

ORDER SHEET  
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Application No.S-918 of 2023

Cr. Bail Application No.S-95 of 2024

Applicants : Anwar Ali Chakrani, and Muhammad Sachal Chakrani, through Mr. Atta Hussain Chandio, Advocate

Complainant : Adam Ali Channa, through Mr. Irshad Hussain Dharejo, Advocate

Respondent : The State through Mr. Imran Mobeen Khan, Assistant Prosecutor General

Date of hearing : **23-04-2024**

Date of Decision : **23-04-2024**

**O R D E R**

**Arbab Ali Hakro, J:** By this common order, I intend to dispose of both above-listed bail applications, as the same being arisen out of the same crime, viz. F.I.R. No. 90 of 2023, registered at Police Station Kumb, District Khairpur, under Section 302, 34 P.P.C., have been heard together.

2. Through Criminal Bail Application No. S-918 of 2023, applicant Anwar Ali S/o Wahid Bux Chakrani and by means of Criminal Bail Application No.S-95 of 2024, applicant Muhammad Sachal alias Sacho have sought pre-arrest bail in afore-mentioned Crime/F.I.R. Their earlier applications for grant of pre-arrest bail were heard and dismissed by the Addl. Sessions Judge-I/ MCTC, Khairpur. They were admitted to ad-interim bail by this Court; now, the applications are fixed for confirmation of their bail or otherwise.

3. Briefly stated facts of the prosecution case are that on 15.05.2023, complainant Adam Ali lodged the afore-mentioned F.I.R.,

alleging that Zafar Ali, son of Shahbaz Dino, was his nephew. Accused Sachal @ Sacho Chakrani and others were annoyed with him and used to say that since he prevents them from coming and going on the way, they will teach him a lesson in the future. On the day of the incident, i.e. 13.05.2023, the complainant was available at the house of his nephew Zafar Ali. At the time, the complainant, Zafar Ali, Zafar's wife Mst. Abida and other members were present. Zafar Ali stepped outside while talking on his mobile phone. After a while, they heard cries of nephew on which the complainant and Mst. Abida grabbed torch lights and rushed outside. It was 2100 hours when they saw on the torch lights that Sachal Chakrani had a cleaver, Anwar Ali was carrying a hatchet, and 02 unidentified persons duly armed with pistols were present. The unidentified culprits caught hold of Zafar Ali while accused Sachal and Anwar Ali Chakrani caused cleaver, and hatchet blows to him on his head. The complainant party raised cries and went towards the accused, and upon seeing them, the accused fled to their house. The complainant found that Zafar Ali had sustained an injury on the back of his head and was bleeding. The complainant party arranged transportation and brought the injured Zafar Ali to GIMS Hospital, Gambat. After leaving the injured under treatment, the complainant went to the Police Station and formally lodged an F.I.R. of the incident, which was initially registered under Section 324 PPC.

4. After registration of F.I.R., the police issued a letter for medical treatment to the injured. However, he succumbed to his injuries on 17-05-2023. Postmortem of the deceased was conducted, and the dead body was taken by the relatives for the funeral ceremony. After the death of injured Zafar Ali, Section 302 PPC was added in the case.

5. Learned counsel for the applicants has contended that they are innocent and have been falsely implicated in the case by the complainant with malafide intentions and ulterior motives. He further argues that there is a delay of 02 days in registration of F.I.R., which has not been adequately explained by the complainant. Hence, the

deliberation and consultation on the part of the complainant cannot be ruled out. He also contended that the applicants have falsely been implicated at the instance of Nazeer Hussain Chakrani due to enmity, which is admitted in the F.I.R. He further claimed that all the P.W.s are close relatives of the complainant and they are highly interested. He also argued that on completion of the investigation, applicant Anwar was let off by the I/O by placing his name in column No.2 of the charge sheet. However, the learned Magistrate did not accept the report and took cognizance against all the accused. He also contended that there is an inconsistency between the medical and ocular evidence, as according to the contents of the F.I.R., the accused Anwar and Sachal have caused cleaver and hatchet blows to the deceased. However, the postmortem report of the deceased mentions only a single injury. Per learned counsel in view of above inconsistency and the background of previous enmity between the parties, false implication of applicant cannot be ruled out, and his case calls for further enquiry as envisaged by subsection (2) of Section 497 Cr.P.C. Lastly, he prayed for confirmation of interim pre-arrest bail already granted to applicants. In support of his contentions, learned counsel relied upon the 2021 SCMR 130, 2011 SCMR 1392, and 2023 SCMR 364.

6. On the other hand, learned A.P.G. and learned counsel for the complainant have vehemently opposed these applications on the grounds that applicants are nominated in the F.I.R. with a specific role, that the applicants in prosecution of their common intention committed the murder of nephew of complainant namely Zafar Ali by causing him injuries; that the alleged offence falls within the prohibitory clause of section 497, Cr.P.C. In the last, they prayed that interim bail granted to the applicants may be recalled. In support of their contention, they relied upon 2009 PLD 427, 2003 SCMR 68 and 2023 YLR 1582.

7. I have considered the arguments advanced by learned counsel for the respective parties and, with their assistance, reviewed the material available on the record.

8. The record reveals that both the applicants are nominated in the F.I.R. with the specific role of causing injuries with a cleaver and hatchet on the back of the head of deceased Zafar Ali. The P.W.s, in their statements recorded under section 161 Cr.P.C., have supported the version of the complainant. The parties were known to each other; therefore, identity of the culprits by the complainant party in the light of a torch cannot be doubted at this stage where only tentative assessment of the material is to be made. The medical certificate shows that one lacerated wound of 14cm was seen at the parietal occipital of the head besides fracture of skull bones. The main contention of learned counsel for the applicants that the ocular version does not get support from medical evidence cannot be appreciated at this stage as it requires deeper appreciation of evidence which as per settled law is un-warranted at the bail stage. Prima facie, the factum and place of injuries disclosed by the complainant and witnesses are supported by medical evidence. Any question over number or kind of weapon used for causing such injuries can only be decided at the trial stage. Reference in this respect is made to the case of **Mumtaz v. State (2012 SCMR 556)** wherein the Supreme Court of Pakistan has observed as under follows;-

*“...the argument qua the conflict between medical evidence and the ocular account cannot be appreciated without a deeper appraisal of evidence which is not warranted at bail stage.”*

9. So far as the delay in lodging the F.I.R. is concerned, record shows that prima facie the delay has been explained by the complainant in that they first took the injured to the Hospital where they were busy in treatment. The complainant party was firstly supposed to save life of injured and not to rush for registration of FIR. As far as grant of bail to co-accused Saqib Ali is concerned, he was not named in the F.I.R. but is only shown as an unknown culprit who had a pistol in his hand; however, he

did not use the same at the time of the incident nor caused any injury to the deceased. It was the present applicants who prima facie caused fatal blows to the deceased; therefore, their case is distinguishable from that of co-accused Saqib Ali. As far as contention of the learned counsel that during course of the investigation, the name of applicant Anwar Ali was placed in column No.2 of the challan is concerned, it may be said that opinion of I.O., to let off any accused is not binding on the court, and it can take cognizance of offence against such accused and decide his case on merits. It is a well-settled exposition of law that the Courts are not bound by the ipse dixit of police; the Court is empowered to formulate its own opinion in light of the evidence available on record. After considering all the facts and circumstances, the concerned Magistrate declined to accept the report and took cognizance against applicant Anwar Ali. In the case of Muhammad Akbar v. State (1972 SCMR 335), it has been observed by the Supreme Court of Pakistan that;

*"Even on the first report alleged to have been submitted under section 173, Cr. P.C., the Magistrate could, irrespective of the opinion of the Investigating Officer to the contrary, take cognizance, if upon the materials before him he found that a prima facie case was made out against the accused persons. After all the police is not the final arbiter of a complaint lodged with it. It is the Court that finally determine upon the police report whether it should take cognizance or not in accordance with the provisions of section 190(i)(b) of the Code of Criminal Procedure. This view finds support from a decision of this Court in the case of Falak Sher v. State (PLD 1967 SC-425)."*

10. The powers available to the Court under Section 498, Cr.P.C. are discretionary and must be exhausted with care and caution, especially in cases of a heinous offence involving the death penalty, imprisonment for life or imprisonment for ten years. The Court has to exercise the power judicially and not arbitrarily. The anticipatory bail under Section 498, Cr.P.C. being extraordinary relief, is granted on extraordinary grounds. It is a settled principle of criminal law that pre-arrest bail should not be allowed in routine matters. The applicants

have been nominated in the F.I.R. with a specific and clear role in the commission of the crime, and the crime weapon is yet to be recovered. The Honorable Supreme Court of Pakistan in case Ghulam Farooq Channa v. Special Judge A.C.E. (Central-I) Karachi PLD 2020 SC 293 has held as follows:

*"4. Grant of bail to an accused required in a cognizable and non-bailable offence prior to his arrest is an extraordinary judicial intervention in an ongoing or imminent investigative process. It clogs the very mechanics of State authority to investigate and prosecute violations of law designated as crimes. To prevent arrest of an accused where it is so required by law is a measure with far reaching consequences that may include loss or disappearance of evidence. The Statute does not contemplate such a remedy and it was judicially advented way back in the year 1949 in the case of Hidavat Ullah Khan v. The Crown (PLD 1949 Lahore 21) with purposes sacrosanct and noble, essentially to provide judicial refuge to the innocent and the vulnerable from the rigors of abuse of process of law; to protect human dignity and honour from the humiliation of arrest intended for designs sinister and oblique. The remedy oriented in equity cannot be invoked in every run of the mill criminal case, prima facie supported by material and evidence, constituting a non-bailable/cognizable offence, warranting arrest, an inherent attribute of the dynamics of Criminal Justice System with a deterrent impact; it is certainly not a substitute for post arrest bail."*

11. It is a well-established principle of law that at the stage of bail and before recording evidence in the trial court, only tentative assessments are to be made for the purpose of deciding bail applications, and it is not permissible to go into the details of evidence one way or another because that might prejudice the case of one party or the other.

12. From the tentative assessment of the evidence in hands of the prosecution, I am of the view that prima-facie sufficient evidence is available against the applicants to connect them with the commission of alleged offence, carrying punishment for death and imprisonment for life. The counsel for applicants has not been able to point out any special

feature of the case entitling the applicants to grant an extraordinary concession of pre-arrest bail. Pre-requisites for such concession, i.e. malice and ulterior motive, either on the part of the complainant or the police, are conspicuously missing in the case. Accordingly, both the bail applications are dismissed, and the interim orders dated 20.12.2023 and 19.02.2024 stand recalled.

13. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of applicants/accused on merits.

Office is directed to place a signed copy of this order in the captioned connected matter.

**JUDGE**

Suleman Khan/PA