

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Bail Appln. No.225 of 2025

Applicant

Muhammad Panjal : through Mr. Ali Ahmed Khan,
Advocate.

The State : through Mr. Khalil Ahmed Maitlo,
D.P.G. Sindh for State.

Complainant,
Mst. Shazia.

: In person.

Date of hearing. : 28.03.2025

Date of Order. : 28.03.2025

ORDER

Ali Haider 'Ada', J. Through this bail application, the applicant/accused namely, Muhammad Panjal seeks his post-arrest bail in Crime No.48 of 2022, registered under section 452, 382, 381-A, 427, 436, 506/2, 337A(i), 337F(i), 114, 148, 149 PPC at Police Station, Tamachani as such incident was reported on 20.10.2022 while the date of incident is also mentioned in the FIR as 05.07.2022.

2. The prosecution believes on the fact that the applicant alongwith other co-accused namely Muhammad Bux, Lakhmeer @ Nabi Bux, Shakeel, Aqeel, Karim Bux @ Akash, Arshad, Azhar Ali, Ameen, Rauf and Shahid armed with deadly weapon assaulted upon the houses of complainant and robbed articles mentioned in the FIR as well as co-accused Aqeel and Arshad caused injuries to PW Ali Gul and Shahmir while the other co-accused who were accompanied each other committed such assault and burnt article which were available at her house.

3. Initially applicant approached to learned Sessions Judge Sukkur, the same was entrusted to Additional Sessions Judge-IV (H) Sukkur, as he became unsuccessful to get order for release on bail and learned Additional Sessions Judge-IV Sukkur dismissed his bail application on the ground of abscondence, as applicant assails such order with a prayer to grant him post-arrest bail.

4. Learned Counsel for the applicant/accused submits that name of applicant is transpired in the FIR but without any specific allegation to cause any kind of injury as well to overact under purview of Section 436 PPC; further submits that mere presence allegedly shown in the FIR, otherwise the applicant was not present at that time. He further submits that from the set of co-accused namely, Karim Bux @ Akash lodged FIR bearing Crime No.26/2022 at Police station, Tamachani against relatives and witnesses of complainant of this case and the same was also challaned and complainant party are facing trial. He further adds that FIR which was lodged by accused Karim Bux was reported on 05.07.2022 when the same date of incident as alleged by the present complainant only in order to balance the litigation the present FIR viz. Crime No.48/2022 was lodged. He further contends that one CrI. Misc. Application No.2259 of 2022 was filed by present complainant against accused, in which story is totally contra with the FIR but police even did not await the result of that application had lodged the FIR during its pendency. He strongly pointed out that in list of proposed accused in application u/s 22-A & 22-B CrPC, the name of present applicant is not mentioned as accused but later on the complainant improved and exaggerates her version by adding the name of present applicant as an accused. He further argues that learned Additional Sessions Judge-IV, Sukkur mere on the ground of abscondence dismissed the bail application of present accused otherwise there is good ground for grant of bail as other set of accused namely, Kareem Bux @ Akash, Lakhmir @ Nabi Bux, Arshad, Ameen

and Shahid who were granted bail on merits, so he has much better case as compared with accused Lakhmir who has allegation with active role. In support of contentions he places reliance upon the case of *Mitho Pitafi v. The State* (2009 SCMR 299).

5. On the other hand learned Deputy Prosecutor General for the State submits that there is criminal record available against the present applicant and even Section 436 PPC falls under the prohibitory clause, therefore, applicant is not entitled to claim bail as a matter of right or matter of grace. Further he supports the order of learned trial Court and adds that present applicant loses some normal rights. He, however, does not controvert the fact that co-accused have been granted bail by the trial Court.

6. Complainant Mst. Shazia Parveen present states that she has full faith upon learned Prosecutor as she is not willing to engage private counsel, therefore, she relied upon State counsel with further addition that accused party along with present accused assaulted upon village as well as at her house in which her family sustained injuries and also articles were burnt by accused; further she adds that present applicant is notorious person and has a criminal record and even she is under threat. During course of arguments when it is asked about fate of application u/s 22-A& 22-B CrPC, which was filed by her before the Learned Sessions Judge Sukkur in which one Lal Bux was alleged to shown as deceased to which she replied that when her FIR bearing Crime No.48/2022 was registered, then, she satisfied and did not follow that application because her grievance was redressed and FIR was registered in which present applicant is nominated; she further replied that the set of accused who were granted bail by learned trial Court, as their Bail Order is not challenged by way of filling any cancellation of bail application and so far the story which was contra between FIR and application

u/s 22-A&B Cr.P.C, in which she replied that police in league of accused, therefore, her version was not properly recorded but failed to file any application against police or I.O, during course of hearing, she placed certain FIRs bearing Crime Nos.37/2024, 03/2024, 44/2024 and 48/2022 Police Station Tamachani and Crime Nos. 02/2023 and 17/2018 Police Station, Bagerji. Lastly she prays for dismissal of bail application of present applicant.

7. Heard and perused the material available on record.

8. In order to declare the accused as an absconder, there is a mechanism available under the Cr.P.C. under which the accused can be declared as a proclaimed offender. The mandatory provision under Section 87/88 Cr.P.C. has to be followed. For essential the same is re-produced as under;

87. Proclamation for person absconding (1) if ay Court [is satisfied after taking evidence] that any person against whom a warrant has been issued by it has be absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less that thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows;

(a) It shall be publicaly read in some conspicuous place of the town or village in which such person ordinarily resides'

(b) It shall be affixed to some conspicuous part of the house or home stead in which such person ordinarily resides or to some conspicuous part of the Court-house.

(c) A copy thereof shall be affixed to some conspicuous part of the Court-house.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive

evidence that requirements of this section have been complied with, and that the proclamation was published on such day.

88. Attachment of property of person absconding (1). The Court issuing a proclamation under Section 87 may at any time order the attachment of any property, moveable or immovable or both, belonging to the proclaimed person.

- 2.....
- 3.....
- 4.....
- 5.....
- 6.....
- [6-(A)].....
- [6-(B)].....
- [6-(C)].....
- [6-(D)].....
- [6-(E)].....
- 7.....

9. The statement of served process or statement of a nearby person is not enough to declare a person as a proclaimed offender, so the trial court ensured to declare a person as a proclaimed offender must follow the law as prescribed because life and liberty of a person is involved and in such like cases it is noticed that the trial court believed only on the statements of witnesses or police declared the person as a proclaimed offender instead of proceedings. The procedure as described in the law to declare the accused as Proclaimed offender/absconder is very essential and necessary to be followed because in criminal jurisprudence the accused is the favorite child of the law and he is presumed innocent until and unless proven guilty by a legal verdict. In the present case, such exercise has not been complied, so the proclamation itself, is not proper and the present applicant/accused cannot be said to be proclaimed offender.

10. Even, Otherwise, It is a well-established principle of law that bail can be granted to an accused if he has a good case on the merits, and mere absconding is not a ground for denying bail. In the present case, other co-accused have already

been granted bail as the present applicant's role as alleged in the FIR was mere presence. To peruse the record which was placed by the complainant, during scanning, the FIR No.37/2024, 03/2024, 44/2024, the present applicant/accused is not named in these FIRs while in FIR No.02/2023, 17 of 2018 of Police Station Bagerji and 48/2022(Instant FIR) Police Station Tamachani the accused is named but nothing recorded to prove guilty by a legal verdict.

11. In view of above, I am of the considered view that applicant/accused has been able to make out a case for grant of bail. Accordingly, instant bail application is allowed. The applicant/accused, namely, ***Muhammad Panjal Mahar*** is granted post-arrest bail subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty thousand) and PR bond in the like amount to the satisfaction of the trial Court.

12. Needless to mention here that observation made herein above are tentative in nature and trial Court may not be influenced of the same in any manner and shall decide the case on its own merits as per evidence and the material ought to be made available before it.

13. Bail application stands disposed of in the above terms.

J U D G E

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