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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.
Cr. Bail Appln. No.S-10 of 2024

Date of hearing

Order with signature of Judge.

1. For orders on office objection.
2. For hearing of bail application.

Applicant : Through Mr. Asif Ali Abdul Razak Soomro,
(Saifuddin Nindwani) Advocate.

The State : Through Mr. Ali Anwar Kandhro, Addl. P.G.

Complainant : Through Mr. Habibullah G. Ghouri, Advocate.
(Khadim Hussain)

Date of hearing : 01.04.2024.

ORDER.

MUHAMMAD SALEEM JESSAR- J.- Through this application, applicant Saifuddin Nindwani seeks his release on post arrest bail in Crime No.04 of 2011, registered with P.S Naper Kot, District Shikarpur, for offences punishable under Sections 302, 324, 364, 427, 148, 149, PPC. Applicant filed post arrest bail application before the trial Court/ IIIrd Additional Sessions Judge, Shikarpur vis-à-vis Cr. Bail Appln. No.91 of 2023, where, after hearing the parties, his request was turned down vide order dated 08.12.2023; hence, this application has been maintained.

2. Since the facts of the prosecution case are already mentioned in the FIR as well as bail application and the order passed by trial Court, therefore, there is no need to reproduce the same.

3. Learned Counsel for the applicant submitted that the applicant is innocent and he has been falsely implicated in this case by the complainant party due to longstanding enmity between the parties. He next submitted that though the applicant is nominated in the FIR with role of causing firearm injury to injured Suleman, but the injury so attributed to him being on leg is on non-vital part of body of injured; besides, said injury as declared by the medico-legal officer carries maximum punishment of 03 years; hence, does not exceed the limits of prohibitory clause of Section 497, Cr.P.C. He further submitted that co-accused Makhno, though against whom no specific role was assigned, has been bailed out by this Court. He submitted that as far as main

role of causing injuries to deceased Hazoor Bux is concerned, same have been assigned to co-accused Jaffer, Dost Ali and Iqbal, who all are at large, hence, due to their absconson the case has not proceeded. He, therefore, prayed for grant of bail to the applicant. In support of his contentions, he placed reliance upon the case reported as *Meeran Bux v. The State and another* (PLD 1989 Supreme Court 347), *Mumtaz Hussain v. The State* (1996 SCMR 1125), *Meeran Bux v. The State and another* (PLD 1989 Supreme Court 347), *Umar Hayat v. The State and others* (2008 SCMR 1621), *Beejal and another v. The State* (2014 PCr.LJ 261), *Wajid Ali v. The State and another* (2017 SCMR 116), *Syed Khalid Hussain Shah v. The State and another* (2014 SCMR 12), *Mian Usman v. The State* (2022 YLR Note 87) and *Jamaluddin and another v. The State and another* (2023 SCMR 1243).

4. Learned Addl. P.G., for the State opposed the bail application, on the ground(s) that the applicant has been assigned specific role of causing firearm injury to injured Suleman, therefore, he is not entitled for bail.

5. Mr. Habibullah G. Ghouri, learned Counsel for the complainant, also opposed the bail application, on the grounds that the applicant is nominated in the FIR and he has actively participated in the alleged crime by causing firearm injury to injured Suleman; besides, the alleged incident has occurred in the broad daylight and the FIR was also lodged promptly. He further submitted that the applicant has remained fugitive from law for a long time and the ocular version is fully corroborated by the medical evidence, therefore, the applicant is not entitled for bail. In support of his contentions, he placed reliance upon the cases reported as *Sabz Ali v. The State* (2023 YLR Note 67), *Sheqab Muhammad v. The State and others* (2020 SCMR 1486), *Noor Bakhsh v. The State* (2020 SCMR 1205) and *Zahoor Khan v. Akhter Muhammad and another* (2020 SCMR 993).

6. Heard learned Counsel for the respective parties and perused the material made available on record.

7. No doubt the applicant is nominated in the FIR showing him to be armed with KK. So far his role is concerned, per prosecution case, he is alleged to have fired at injured PW Suleman, hitting at his left leg, which is a non-vital part of the body; nonetheless, said injury as declared by the medico-legal officer is carrying maximum punishment of 03 years; and does not attract the prohibition contained under Section 497, Cr.P.C. There is previous enmity between the parties. So far deceased Hazoor Bux, the applicant is not alleged to have fired upon him and the role of firing at deceased is assigned to co-

accused Jaffer, Dost Ali and Iqbal, who all are at large. Besides, co-accused Makhno, who was arrested along with present applicant, has also been granted bail by this Court. Moreover, as far alleged absconsion of the applicant is concerned, it is well-established principle of law that if an accused has got good *prima facie* case on merits, then mere his absconsion would not intercept the way while extending concession of bail to him. Reliance can be placed upon the case of *Mitho Pitafi v. The State* (2009 SCMR-299).

11. It is well-settled principle of law that every accused would be presumed to be blue-eyed boy of law until and unless he may be found guilty of the alleged charge and law cannot be stretched upon in favour of the prosecution, particularly, at bail stage. In the circumstances and in view of citations relied upon by learned Counsel for the applicant, the case against the applicant requires further enquiry as contemplated under sub-section (2) of Section 497, Cr.P.C. As far the law cited by learned Counsel for the complainant and learned DPG, it has got no relevancy as the facts and circumstances of present case are different from those cases. Consequently, instant bail application was allowed by a short order dated 01.04.2024, whereby the applicant was directed to be released on bail subject to his furnishing solvent surety in the sum of Rs.500,000/- (Rupees five hundred thousand only) and P.R bond in the like amount to the satisfaction of learned trial Court. Above are the detailed reasons of said short order.

12. Needless to mention here that the observations made herein-above are tentative in nature, which shall not prejudice the case of either party at trial.

Judge