

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Bail Appln. No.S-47 of 2024.

Crl. Bail Appln. No.S-64 of 2024.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
<u>18.03.2024</u>	<p>1. For orders on office objection 'A'. 2. For hearing of bail application.</p>

Mr. Ahmed Bux Abro, advocate for applicants in both matters, along with applicants (on bail) in Crl. Bail Appln. No.S-47/2024.

M/s Ashique Ali Jatoi & Naseer Ahmed Wagyan, advocates along with complainant in both matters.

Mr. Ali Anwar Kandhro, Addl. P. G.

ORDER.

MUHAMAD SALEEM JESSAR-J These bail applications have been directed against the common order dated 22.01.2024, passed by the Sessions Judge, Kamber Shahdadkot @ Kamber, vide Crl. Bail Appln. Nos.17 of 2023, 37 of 2023 & 76 of 2023, whereby pre-arrest bail applications filed by the applicants Saddam Hussain, Abid Hussain and Amjad were rejected and also application filed by Arshad Hussain under section 497, Cr.P.C has been dismissed.

2. Per prosecution case, the applicant Abid Hussain fired a pistol shot to injured PW Khaleel Ahmed son of complainant which landed at his thigh of left leg, whereas, applicant Arshad Hussain allegedly caused pistol butt to the injured PW Khaleel Ahmed on his head, whereas, role assigned to applicants Saddam Hussain and Amjad is nothing but mere their presence.

3. Learned counsel for the applicants submits that the applicant Abid Hussain who allegedly fired upon injured PW Khaleel Ahmed on his left leg was let off by the police and his name was kept under column No.2 of the challan. As far as injury allegedly attributed

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to applicant Arshad Hussain is concerned, said injury allegedly sustained by PW Khaleel Ahmed on his head has been opined by the Medico Legal Officer to be Shajjah-i-Khaifsa falling under section 337-A(i), PPC and is bailable, hence prays for grant of bail applications. In support of his contention, he places his reliance upon the cases of **MUHAMMAD UMAR v. THE STATE and another (PLD 2004 Supreme Court 477)** and case of **JAMALUDDIN and another v. The STATE (2023 SCMR 1243)**.

4. Mr. Ali Anwar Kandhro, learned Addl. P. G submits that though the applicants are nominated in the FIR; however, the applicant Abid Hussain against whom specific role of causing firearm injury to injured PW Khaleel Ahmed is assigned was let off by the police during investigation whereas applicant Arshad Hussain has been assigned role of causing butt blow to injured PW on his head and such injury has been described by the Medico Legal Officer to be bailable. As far as remaining two accused namely, Saddam Hussain and Amjad are concerned, have been assigned no role hence he has no objection for grant of bail application(s).

5. M/s Ashique Ali Jatoi and Naseer Ahmed Wagyan, counsels for complainant oppose the bail applications on the ground that the applicants are nominated in the FIR; besides the specific role of causing injuries to injured have been assigned to them therefore they are not entitled for bail.

6. I have heard learned counsel for the parties, learned Additional P. G appearing for the State and perused the material made available before me on record.

7. No doubt the applicant Abid Hussain is nominated in the FIR and he allegedly fired upon injured PW Khaleel Ahmed which landed at thigh of his left leg; however, no fracture was caused. The

police during investigation have let off the applicant Abid Hussain by placing his name under column No.2 of the challan and later he was joined by the Magistrate concerned. As far as role attributed to applicant Arshad Hussain is concerned, he allegedly caused pistol butt blow to injured PW Khaleel Ahmed on his head. The injury attributed to applicant Arshad Hussain has been declared by the Medico Legal Officer to be *Shajjah-i-Khafifah* punishable under section 337-A(i), PPC, which is bailable. As far as applicant Saddam Hussain and Amjad Ali are concerned, mere their presence has been shown and no specific role or overt act is assigned against both of the accused. Per FIR, though the complainant party was empty handed and under the complete mercy of the accused; however, none of the accused had repeated firearm injury through which it could be deduced that they had any wrong intention to cause their *Qatl-i-Amd*. In such eventuality, the accusation against the applicants is yet to be determined by the trial Court after recording pro and contra evidence of the prosecution. In view of dicta laid down by the learned Apex Court in case of *KHALIL AHMED SOOMRO and others v. THE STATE (PLD 2017 Supreme Court 730)*, the case against the applicants requires further enquiry. Consequently, instant bail application is hereby allowed. Ad-interim pre arrest bail granted to applicants Saddam Hussain, Abid Hussain and Amjad Ali, vide order dated 25.01.2024 is hereby confirmed on the same terms and conditions.

8. Since the applicant Arshad Hussain Gopang has been assigned simple injury to injured PW Khaleel Ahmed, which is bailable. In the light of dicta laid down by Hon'ble Supreme Court of Pakistan in case of *Muhammad Tanveer v. The State (PLD 2017 SC 733)*, the case against applicant Arshad Hussain is also covered by sub-section (2) of Section 497, Cr.P.C. Consequently, Crl. Bail Appln. No.S-64 of 2024 is also hereby allowed. The applicant Arshad Hussain shall be released on

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bail subject to his furnishing solvent surety in the sum of Rs.50,000/- and P.R bond in the like amount to the satisfaction of the trial Court.

Jud

M.Y.Panhwar/**

App in O/o Case

1-Fw Ordm m MA No. 4636/75 (ulm)

2-Fw Ordm m MA No. 4637/75 (ExM)

3-Fw Ordm m MA No. 4638/75 (5G1-n)

- Accountant report w flag "B"