

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Criminal Bail Application No.426 of 2021**

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*Date*

*Order with signature of Judge*

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*For hearing of Bail Application.*

**23.08.2021**

Mr. Zakir Hussain Bughio, Advocate for the Applicant.  
Ms. Rahat Ehsan, Addl. Prosecutor General, Sindh.  
Mr. Zia Ahmed Awan, Advocate for the Complainant.

**ORDER**

**Muhammad Saleem Jessar, J:-** Through this bail application, Applicant Abdul Hameed @ Baba Baloch seeks his release on post arrest bail in Crime No.319/2014 of P.S Kharadar, Karachi, under Sections 395/216/412/109/34 PPC. The applicant preferred his bail plea before the first forum, which was turned down by means of order dated 02.03.2021; hence, he has approached to this Court through this Application.

2. Since the facts of the prosecution case are already mentioned in the FIR, which is annexed with Court file, therefore, there is no need to reproduce the same.

3. Learned counsel submits that applicant was granted bail by the trial Court in terms of order dated 02.12.2016 (annexure-D available at page-29 of the Court file); however, after furnishing surety, he disappeared for some time and subsequently was arrested by the Mithadar police in connection with Crime No.215/2019 for offence under Section 23(i) (a) Sindh Arms Act, 2013 on 03.05.2019. However, after full dressed trial, he was acquitted of the charge by way of judgment dated 22.07.2019 rendered by 10<sup>th</sup> Assistant Sessions Judge, Karachi (South) vide Sessions Case No.1213/2019 (re-the State Versus Abdul Hameed). In support of his contention, learned counsel submits copy of said judgment, same is hereby taken on record. He further submits that after his arrest in some other crime, he was produced before the trial Court, therefore, second bail application was filed on his behalf, which was declined vide order dated 16.01.2020, therefore, applicant again filed criminal bail application No.1398/2020 before this Court, which too was disposed of in terms of order dated 28.09.2020 with directions to trial

Court to conclude the trial within two months' time; however, due to non-production of witnesses, trial has not been concluded. The trial Court has also furnished its report dated 20.08.2021 to the effect that due to falling down of balcony of the Court premises, one of the co-accused namely Umair died while other Jam Akhtar sustained grievous injury on his head, therefore, he has not been appearing.

4. On the other hand, learned Addl. P.G, Sindh as well as learned counsel for the complainant oppose the bail application on the ground that applicant has misused the concession extended to him by the trial Court; hence, he does not deserve any leniency in the shape of his release on bail. They; however, admit that he is not nominated in FIR nor was subjected to identification parade before the Magistrate even nothing incriminating was secured by the police from his possession whilst he was in custody.

5. **Heard arguments, record perused.** Admittedly, the applicant all along was granted bail by the learned trial Court and co-accused having been assigned the same role are enjoying concession of bail extended to them by the trial Court. The main ground for refusal of the bail to applicant is that he remained fugitive from the law for certain period; however, after his re-arrest on 30.05.2019 he is still in custody without progress in his trial. Moreover, the co-accused are on bail and the trial despite lapse of about one year has not been concluded as per directions contained in the order dated 28.09.2020; therefore, at this stage further confining of the applicant behind the bars would not meet the ends of justice, as such, the case against present applicant is at par with co-accused and he appears to be granted bail. In this respect, reliance is placed upon the case of *MITHO PITAFAI v. The STATE (2009 SCMR 299)*.

6. The upshot of above discussion is that applicant has made out a prima facie case for his release on post arrest bail within the meaning of subsection 2 to Section 497 Cr.P.C. Consequently, bail application in hand is hereby allowed. Applicant **Abdul Hameed @ Baba Baloch son of Gul Hassan**, shall be released on bail subject to furnishing his solvent surety in the sum of Rs.300,000/- (Rupees Three Lacs Only) and PR Bond in the like amount to the satisfaction of learned trial Court.

7. Needless to mention here that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, the learned trial Court may proceed against the applicant, if he is found misusing the concession of bail.

8. This Criminal Bail Application is disposed of in the terms indicated above.

*JUDGE*

Zulfiqar/P.A