

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR  
**Cr. Bail. Appln. No.S – 62 of 2021**

Date	Order with Signature of Hon'ble Judge
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**For hearing of bail application**

1. For orders on office objection at flag 'A'
2. For hearing of bail application

**08.03.2021**

Mr. Sajjad Hussain Kolachi Advocate for the Applicant/accused  
 Syed Asghar Ali Shah Advocate for the complainant  
 Mr. Khalil Ahmed Metlo, DPG for the State

**ORDER**

**Aftab Ahmed Gorar, J:-** Through instant Criminal Bail Application, the applicant/accused Ghulam Rasool alias Mithal S/o Tindo Khan Qambrani, seeks post-arrest bail in case / crime arising out of FIR No.198 of 2019 registered at Police Station, Mirwah, District Khairpur for offences punishable under Sections 302, 337-H(i), 147, 148, 149 & 109 PPC.

2. Precisely stated the facts of the prosecution case are that on 05.11.2021 at 2300 hours, complainant Allah Bux Qambrani lodged his FIR at Police Station Mirwah, stating therein that there was dispute going on in between him and Ghulam Rasool alias Mithal and Muhammad Khan over the landed property. On the date of incident, he along with his brother Nizamuddin, cousin Asghar Ali and son Hakim Ali were standing near the Flour Machine, when all of sudden at about 1300 hours, there came each one Ghulam Rasool alias Mithal (present applicant) with rifle, Roshan Ali

with Kalashnikov, Sadam, Imtiaz, Muhammad Khan, Asad and one unknown person having T.T Pistols, on coming they started working in his land and on restraining, accused Ghulam Rasool alias Mithal made direct fire which hit his brother (complainant's) Nizamuddin on his head, who raised cries and collapsed on the ground, whereas, the complainant and his witnesses took shelter in the Walls of Flour Machine and raised cries, which attracted the co-villagers, on seeing them coming, all the accused persons escaped away. Thereafter they went over Nizamuddin and noticed that he had firearm injury on his head and was dead and after autopsy and interment, the complainant went to Police Station and lodged the FIR, as stated above.

3. The applicant/accused on having been refused post-arrest bail by the Court of learned Additional Sessions Judge, Mirwah vide order dated 04.01.2021, seeks the same from this Court by way of instant criminal bail application.

4. It is contended by learned counsel that the applicant/accused is innocent and has been falsely implicated by the complainant in the instant case; that there was dispute between the parties over the landed property; that the applicant/accused is behind the bars since long and is languishing in jail; that the co-accused Ashique Ali, Roshan Ali and Sadam Hussain have been granted pre-arrest bail, whereas, co-accused Imtiaz, Muhammad Khan and Asad were granted post-arrest bail by the trial Court / Additional Sessions Judge, Mirwah; that the ocular version as setout in the FIR is not supported by the medical evidence; that there is no material available on record to connect the applicant/accused with the commission of the

offence; that actually thrice investigation was conducted in this matter as during investigation it was surfaced that the deceased was died on the roof top of his house; that since the co-accused have been granted pre-arrest and post-arrest bail by the trial Court, hence the applicant/accused is also entitled for the same concession; that the applicant/accused has made-out a case for grant of bail.

4. Learned counsel for the complainant as well as learned Deputy Prosecutor General for the State opposed for grant of bail to the applicant/accused by contending that the complainant in his FIR has specifically named the applicant/accused with active role that he duly armed with Rifle along with co-accused came at the lands and started working in the lands of the complainant and on restraining, he made direct fire which hit on the head of the deceased Nizamuddin, who died at the spot; that most of the prosecution witnesses have been examined, but the applicant/accused is using foul methods to delay the trial; that the impugned order of the trial Court is very much clear that the applicant/accused has also remained fugitive from law. In support of their contention, they relied upon the ***case of Muhammad Iqbal v. The State and another (2020 P Cr. L J Note-34) [Lahore]***.

5. I have heard the learned counsels for the applicant/accused, learned counsel for the complainant and Deputy Prosecutor General for the State and also gone through the record. The FIR of the incident has been lodged by the complainant promptly by assigning the specific role to the applicant/accused of making direct fire from his Rifle upon the deceased

Nizamuddin, hitting him on his head, which resulted in the death of deceased at the spot. The offence with which the applicant/accused has been charged entails capital punishment and falls within the prohibitory clause of Section 497 Cr.P.C, therefore, he does not deserve for the concession of bail. So far as the contention of learned counsel for the applicant/accused that the co-accused Ashique Ali, Roshan Ali and Sadam Hussain who have been granted pre-arrest bail, whereas, co-accused Imtiaz, Muhammad Khan and Asad were granted post-arrest bail by the trial Court / Additional Sessions Judge, Mirwah is concerned, I have meticulously examined the record and it is evident that the role attributed to the co-accused (supra) is only of mere presence, whereas, the active role of direct fire upon the deceased Nizamuddin is attributed to the present applicant/accused. In that situation, the role of the present applicant/accused cannot be equated with the role assigned to the co-accused (supra). Accordingly, the applicant/accused has not been able to make-out a case for further inquiry entitling to grant of bail. Consequently, the instant criminal bail application is **dismissed**.

The above observations made herein above are tentative in nature and will not prejudice the case of either party at trial.

Judge