

**HIGH COURT OF SINDH, CIRCUIT COURT AT  
HYDERABAD**

Cr. Bail Application No.S-978 of 2022

*[Rustam & Ors versus The State]*

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
Applicants:	Through Mr. Nabi BuxNarejo advocate
State:	Through Mr. Shahid Shaikh, Additional P.G
Complainant:	Through Mr. Bhooro Bheel advocate
Date of hearing:	17.10.2022
Date of Decision:	17.10.2022

**ORDER**

**ADNAN-UL-KARIM MEMON, J:-** Through this bail application, applicants/ accused seek post-arrest bail in F.I.R No.01 of 2022 registered with P.S Soofi Fakeer for offenses punishable under Section 302, 324, 452, 337-A(i), 337-H(ii), 147, 148 & 149 PPC. The applicants' plea for post-arrest relief was turned down by the trial court vide order dated 08.09.2022, on the analogy that applicants are nominated in F.I.R with active role of participating in the commission of Qatl-i-amd of deceased Muhammad Ramzan within the meaning of Section 302 PPC which hits the restriction contained in S. 497(i) Cr.P.C. besides the statements of witnesses under Section 161 Cr. P.C coupled with post mortem report of deceased and MLCs of injured PWs fully supported the version of complainant, which rules out any possible falsity. Additionally the crime weapons viz. lathis and hatchets had been recovered from the possession of applicants / accused under proper mashirnama. On the question of cross version of FIR learned judge opined that mere existence of cross-case could not be a ground for grant of bail. Moreover, in the existence of recovery of crime weapons from the applicants/accused, their roles could not be equated with that of co-accused who were admitted to bail by this Court.

2. Prima-facie the accusation against the applicants is that on 13.01.2022 they along with their accomplices entered the house of complainant and the main accused Usman made straight fire at his father Muhammad Ramzan to commit his murder, while applicant Talib Hussain caused hatchet blow to his maternal uncle Gohram and accused Rustam caused hatchet blow to his brother Salman then accused Ali Muhammad Banglani and Bilawal made aerial firing and in result, the father of complainant succumbed to the injures and died; the aforesaid incident was

reported to the concerned police, who lodged F.I.R. the applicants were arrested and recovery was effected from their possession.

3. Mr. Nabi Bux Narejo learned counsel for applicants argued that the prosecution story seems to be concocted, manipulated, false and frivolous; that there is delay of one day in lodgment of FIR without explanation; that no specific role is assigned to applicants and allegations against them are general, which creates doubt; that complainant is not the eye witness of alleged incident; that all the PWs are relative to each other; that applicants are innocent and have falsely been implicated in the present crime. He prayed that applicants may be admitted to post-arrest bail.

4. Mr. Shahid Shaikh, Additional P.G assisted by Mr. Bhooro Bheel learned counsel for complainant; however, vehemently opposed the bail with the assertion that the applicants/accused are nominated in FIR with specific role; that delay has sufficiently been explained, as injured as well as the dead body was shifted to hospital and after necessary formalities, which includes funeral ceremony, FIR was lodged; that case of applicants falls within the ambit of prohibitory clause, as such they are not entitled to the concession of bail.

5. I have heard learned counsel for the parties and perused the record with their assistance.

6. The tentative assessment of record reflects co-accused Ghulam Hussain and Bilawal have been admitted to post-arrest bail by this Court in Bail Application No.549 of 2022 vide order dated 12.8.2022; besides there is the counter version in terms of F.I.R No.4 of 2022. The learned Magistrate vide order dated 9.4.2022 opined that I.O submitted the final investigation report under "B" class and declared all the accused persons innocent in the report. Prima-facie these circumstances require a thorough probe, which could not be thrashed out in bail matters and it is for the trial court to look into the version of the parties after recording evidence. However, in bail matters, the basic concept is that no innocent person's liberty is to be curtailed until and unless proven otherwise. The principle of law is that every accused is an innocent person until his guilt is proved and it is also well-settled principle that law is not to be stretched in favor of the prosecution but the benefit of doubt will go to the accused even at bail stage. An essential pre-requisite for grant of bail under sub-section (2) of

section 497, Cr. P.C is that the Court must be satisfied based on the opinion expressed by the police or the material placed before it that there were reasonable grounds to believe that the accused was not guilty of an offense punishable with death or imprisonment for life. It is also well-settled principle that at bail stage deep scrutiny of evidence is not permissible nor it is the requirement of law. However, this question cannot be decided in vacuum and the Court has to look at the material available for arriving at a tentative opinion as to whether the accused is prima facie connected with the commission of offense or not.

7. Prima-facie there is a cross-version, coupled with the rule of consistency as discussed supra, though the matter in cross-version has been referred to in B class and this aspect of the matter is to be seen by the competent forum as such report whether is approved or otherwise as no material has been placed on record to show in this regard. In these circumstances, it is for the trial Court to determine who was the aggressor and who was aggressed upon, of course, after recording evidence of the parties. As for now, the case against the applicants calls for further inquiry falling within the ambit of Section 497(2), Code of Criminal Procedure. On the aforesaid proposition, I am guided by the decision of Honourable Supreme Court in the case of *Sadiq Ali v. The State* (2020 SCMR 679).

8. For the foregoing reasons, I am of the considered view that this is a fit case of further inquiry in terms of the rule of consistency as discussed in the preceding paragraph, therefore, the applicants are granted post-arrest bail subject to furnishing solvent surety in the sum of Rs.2,00,000/- (Rupees Two Lacs) each and P.R bond in the like amount to the satisfaction of trial Court.

9. The observation recorded hereinabove, is tentative in nature and shall not prejudice the case of either party at trial, which shall be decided on its own merits within two weeks.

**JUDGE**