

# IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Bail Application No.S-800 of 2022

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DATE	ORDER WITH SIGNATURE OF JUDGE
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16.09.2022

Mr. Jahangir Kalhoro advocate for applicants.

Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

## ORDER

**Amjad Ali Sahito, J:-** Through this bail application, the applicants / accused namely, Ali Raza and Rawat @ Rawat Ali seeks post-arrest bail in Crime No.11/2022 for the offence under sections 302, 337H (ii), 504, 34 PPC, registered at Police Station Wahi Pandhi, whereby the bail plea of the applicants / accused was declined by the learned Additional Sessions Judge-I / Model Criminal Trial Court, Dadu vide order dated 31.05.2022.

2. The details and particulars of the FIR are already available in the bail application and FIR, the same could be gathered from the copy of the FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Learned counsel contended that though the applicants / accused are innocent and the allegations levelled against them are false and baseless. Learned counsel has further contended that from the face of FIR, it appears that there is enmity between the parties. The role assigned against the applicant Ali Raza son of Mehmood and Rawat alias Rawat Ali son of Ghulam Mustafa made aerial firing and both did not cause any injury to the deceased; in fact, main role is attributed against the co-accused Qurban Ali, who fired from his pistol upon complainant's brother Soomar. He has further contended that the applicants / accused are in jail for last five months; however, no progress has been made in the case before trial Court. In support of his contentions, he has relied upon the cases of 'QURBAN ALI v. The STATE and others' [2017 SCMR 279] and 'MUMTAZ HUSSAIN and 5 others v. THE STATE' [1996 SCMR 1125].

4. On the other hand, learned A.P.G. vehemently opposed the bail application and submitted that names of accused are appearing in the FIR and

they were present at the place of wardat. However, she has admitted that both applicants / accused has not caused injury to the deceased.

5. I have considered the submissions of the learned counsel for the applicants / accused and learned A.P.G. for the State and have gone through the material available on the record.

6. No doubt that the names of the applicants/accused find a place in the FIR but no specific role has been assigned against the applicants / accused and mere presence has been shown at the place of instance. From the face of FIR, it appears that there is enmity between the complainant and accused party, as such, false implication of the applicants / accused cannot be ruled out. Only ineffective firing is alleged to have made by the applicants/accused but the deceased did not sustain any injury. In this regard, I am fortified with the order of Hon'ble Supreme Court of Pakistan passed in the case of **"MUHAMMAD SADIQ and another v. THE STATE"** reported in 1996 SCMR 1654, whereby bail was granted to the accused on the ground that the accused were alleged to have made firing and raised lalkara though the accused were stated to be armed with pistol and rifle, but they did not cause any injury to the complainant party. In case of **'Qurban'** [supra], the Honourable Supreme Court has granted bail to the accused who had not been attributed any role during the occurrence except lalkara. Trial Court in such circumstances had to determine, after recording pro and contra evidence, whether the accused was vicariously liable for the acts of his co-accused. Case against accused was one of further enquiry. In the case of **'Mumtaz'** [supra], the bail was granted to the accused despite being allegedly armed with deadly weapons like rifle, gun and hatchet had only caused simple blunt injuries to some of the prosecution witnesses using the wrong side of their- weapons---Question whether the accused in such circumstances shared common intention with co-accused who had caused death of the deceased needed further inquiry. In the instant case, as far as the allegation against the applicants/accused that they have shared the common intention with co-accused or attempt to murder deceased is concerned, it will be determined at the trial.

7. In view of the above facts and circumstances, learned counsel for the applicant/accused has made out the case for further inquiry as envisaged in subsection 2 of section 497 Cr.P.C. Consequently, the applicants / accused namely, Ali Raza son of Mehmood and Rawat alias Rawat Ali son of Ghulam Mustafa areis admitted to post-arrest bail, subject to their furnishing a solvent surety in the sum of Rs.1,00,000.00 (Rupees one hundred thousand

only) each and PR bond in the like amount to the satisfaction of learned trial Court.

**8.** It is made clear that if the applicants after getting bail will not appear before the trial Court and the trial Court is satisfied that the applicants become absconders and fugitive to law, then the trial Court is fully competent to take every action against the applicants/accused and their sureties including cancellation of bail without referring to this Court.

**9.** Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants / accused on merits.

**JUDGE**

\*Abdullah Channa/PS\*