# IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr.Bail Appln:No.S-1372 of 2022

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| Applicant: | Yaqoob alias Porho son of Illahi Bux Dahri, through Mr. Khadim Hussain Laghari, Advocate. |
| Complainant: | Azizullah son of Anwer Dahri, through Syed Shafique Ahmed Shah, Advocate. |
| Respondent: | The State through Mr. Shahzado Saleem Nahiyoon, Addl.P.G. |
| Date of hearing: | **29.05.2023** |
| Date of Order: | **29.05.2023** |

## *O R D E R*

***KHADIM HUSSAIN SOOMRO, J:-*** Through the instant criminal bail application, the applicant/accused above named seeks his post-arrest bail in Crime No.120 of 2020, under sections 302, 114, 506/2 P.P.C, registered at P.S Saeedabad, after his bail plea was declined by the learned Additional Sessions Judge, Matiari vide order dated 28.03.2023.

2. The facts of the prosecution case, in a nutshell, are that on 25.10.2020 at about 1600 hours, complainant Azizullah lodged his FIR, stating therein that adjacent to his house there is the house of Ali Khan Dahri and his wife Gul Bano. Unknown persons used to come to their home at odd hours of the night; hence his brother Rahib and other villagers restrained Ali Khan not to call strangers into his house, but he did not refrain from doing so; therefore, they also made such a complaint to the Nek Mard of the locality/village which was annoyed to Ali Khan, and he used to tell them that they by giving such complaints to the notables of the vicinity made them disreputable in the society hence they will teach a lesson to them. He further stated that on 25.10.2020 at about 0030 hours (12:30 a.m. night) when the complainant, along with Rahib (deceased), Bachal and Abdul Shakoor reached near Achar Dahri Petrol Pump where

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they saw and identified the accused through torch light to be Ali Khan and his wife Gul Bano alias Gul and Yaqoob alias Porho who was armed with a rifle, and Raheem armed with the pistil, and one unknown accused, out of them accused Ali Khan and his wife Gul Bano instigated co-accused to kill Rahib Dahri and the result of such instigation, accused Yaqoob alias Porho (applicant/accused) made straight fires from rifle upon Rahib, which hit on his face and he fell down and died. After that, accused Raheem pointed his pistol and threatened them, and all accused fled away by bordering a white colour Car from the occurrence; hence, this FIR.

3. Learned counsel for the applicant/accused contended that the alleged incident took place on 25.10.2020 at about 0030 hours, and the same was reported with a delay of about more than 15 hours without any plausible explanation; hence due deliberation and consultation in the registration of FIR cannot be ruled out. He further contended that entry No.23 of Roznamcha does not reflect the name of the applicant/accused. Learned counsel for the applicant/accused also submitted that from the place of the incident, four empties were recovered, whereas the deceased sustained only one injury on his face. He further stated that the learned trial Court had granted bail to co-accused Ali Khan and Mst. Gul Bano, therefore, the applicant/accused is also entitled to the principle of the rule of consistency. He urged that the alleged incident took place at Achar Dahri Petrol Pump, but no independent witness was cited to witness the incident. Counsel further contended that the alleged recovery was foisted upon the applicant/accused, and the source of identification of the applicant/accused was Torch Light, which is a weak type of evidence. Hence, it creates doubt in the prosecution case. The learned counsel for the applicant/accused lastly urged that there is no criminal record or history against the applicant/accused. The deceased has committed suicide but the complainant has implicated the applicant accused falsely .He in support of his contentions relied upon case of ***NOORUDDIN and another vs THE STATE (2005 MLD 1267), JAHANZEB and others vs THE***

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***STATE through A.G. Khyber Pakhtunkhwa Peshawar and another (2021 SCMR 63) and WALEED ARFAQAT vs The STATE and another (2022 P.Cr.L.J 810).***

4. Conversely, learned counsel for the complainant has vehemently opposed the grant of bail to the applicant/accused on the ground that the name of the applicant/accused very much appears in the FIR, with a specific role of murdering an innocent young man. He contended that the role of the present applicant/accused is entirely distinct and distinguishable from the role of the co-accused. At the time of the incident, Mst. Gul Bano and Ali Khan only instigated the main accused (applicant/accused), who immediately fired at the deceased, which hit him in the face. He urged that the eyewitnesses of the incident, namely Bachal and Abdul Shakoor recorded their 161 CrPC statements which implicated the applicant accused with the commission of the offence. The post-mortem report is also in line with the ocular version; therefore, at this stage, the applicant/accused is not entitled to a concession of bail in his favour.

5. Learned Addl.P.G for the State has adopted the same arguments so advanced by the learned counsel for the complainant and he additionally argue that there is no motive or cause on the part of complainant to implicate present applicant/accused in the commission of offence by leaving their real culprit[s] who had murdered of his son namely Rahib who was aged about 20 years. He urged that per learned counsel for the applicant/accused this is suicide case but had it been a case of suicide there would have been blackening and charring which is missing as per post mortem report, which shows that the injury on the fatal part and vessels damaged the brain i.e. sufficient in ordinary course of nature to cause death hence he opposed to grant of bail.

6. I have heard the learned counsel for the parties and perused the material available in police file and the case law so relied upon by them.

7. From the plain reading of the contents of the FIR, it appears that the name of the applicant/accused is specifically mentioned in it with a predominant role that

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caused firearm injury in the face, which was the main cause of death of the deceased. Further, during the investigation, 161 Cr. P.C. statements of P.W.s, namely Bachal and Abdul Shakoor were recorded, who fully implicated the present applicant/accused with the commission of the offence and supported the version of the complainant. Moreover, the medical evidence supports the ocular version, which prima facie connects the applicant/accused with this crime. As far as the delay of FIR registration of FIR is concerned, the complainant in his FIR has categorically stated that after the funeral and burial of the deceased, he went to the police station and lodged FIR; moreover, it is a matter of fact that the police station is at the distance of 7 to 8 kilometre away from the place of incident hence complainant has justified the delay in the registration of FIR. Moreover, the Rifle was recovered from the applicant/accused, and the same was sent to the ballistic expert for analysis and report, which is positive. Further, counsel for the applicant/accused urged a plea that this is a case of suicide, but at this stage, he could not bring sufficient material on record which shows that the deceased had committed suicide. The applicant was accused murdered the son of the complainant in a brutal manner by hitting a firearm injury on the face of the deceased; resultantly he lost his life. Moreover the case laws relied by the learned counsel for the applicant is distinguished to the facts and circumstances of the case.

8. The Supreme Court of Pakistan in the case of **BASHARAT ALI V/S The STATE** reported in 2022 SCMR 267, rejected the bail application of the applicant accused on the grounds that since the parties are known to each other, and there is no chance of misidentification, the applicant accused has the specific role of causing firearm injury to the deceased, and there is corroboration between ocular and medical evidence, the relevant portion of the judgment is reproduced as under:-

> *" There is no denial to this fact that the occurrence has taken place within the premises of Police Station Miana Gondal, the parties also belong to the same vicinity and there is no chance of mis-identification*

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*especially when the parties are inimical to each other. As per the accusation against the petitioner, he is ascribed the role of causing fire-arm injury on the body of the deceased as well as injured PW. Both the injuries are spelt out from the medical report. During the course of first investigation, the petitioner was found fully involved in the case. The claim of the petitioner that during the second investigation, he was found innocent does not imprint any concession in his favour especially when this aspect was already taken into consideration by the High Court while dismissing the petition for bail in the first round of litigation. Further that the Investigating Officer who gave opinion in favour of the petitioner has not dared to place his name in column No.2, rather the same was placed in column No.3 of the report submitted under section 173, Cr.P.C. Further that the ground urged before the High Court and before us was already in the knowledge of the petitioner and that cannot be made basis for filing another application before the High Court keeping in view the dictum laid down in The State through Advocate-General, NWFP v. Zubair and 4 others (PLD 1986 SC 173), otherwise the ipse dixit of the police is not binding, rather it has persuasive value but that depends upon the facts and circumstances surfaced on the record. It is salutary principle of law that each criminal case has its own facts and circumstances and has to be decided according to the peculiar facts brought on the record. The contention of the learned counsel that the recovery has become inconsequential has no bearing at this stage and the same would be resolved after recording of the evidence".*

8. Under these circumstances, there is sufficient material on the record to connect the applicant/accused in this heinous offence and prima facie; there appear to be

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reasonable grounds for believing that he has committed the alleged offence. Resultantly, the instant bail application is dismissed.

9. At this juncture, it has been informed by all the counsels that the charge has been framed, and the complainant and pws are attending the trial court on each and every date of hearing, but due to the non-availability of the defence counsel, the matter could not proceed. However, the learned trial court has provided counsel to the applicant accused at the state's expense. Therefore, the learned trial court is hereby directed to conclude the trial within a period of one month with a compliance report to the Additional Registrar of this Court. If the matter cannot be concluded within the specified period of one month; in that case, the applicant/accused is at liberty to move bail application on the fresh grounds available to him.

10. The observations herein above are tentative, and nothing herein shall be construed to prejudice the case of either side at trial.

11. The instant application is disposed of accordingly.

Ahmed/Pa.