

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Bail Application No.S-79 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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<u>20.03.2023</u>	For orders on office objection. For hearing of main case.
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Mr. Abdul Hameed Bajwa, advocate for the applicants.

Mr. Rizwan Ali Jat, advocate files power on behalf of legal heirs of deceased, taken on record.

Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Amjad Ali Sahito, J:- Through instant bail application, the applicants/accused namely, Ali Raza and Waqas Ali seek post-arrest bail in Crime No.132/2022, registered at Police Station Sanghar for the offence under sections 302, 376, 34 PPC. Earlier the bail plea of the applicants/accused was declined by the learned Additional Sessions Judge, Khipro vide order dated 14.01.2023.

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 for the applicants has mainly argued that the applicants/accused is innocent and have falsely been implicated in this case; that the names of the applicants/accused do not transpire in the FIR; that no specific role has been assigned against the applicants/accused; that the applicants/accused have been implicated in the instant crime on the statement of co-accused Muhammad Umar, who in his confessional statement has alleged that main accused Asghar Mari has committed murder of deceased Mst. Anila; that no medical and other evidence has come during investigation against the applicants/accused to support the version of prosecution. According to him this is a fit case for further inquiry and prayed for grant of bail to the applicants/accused.

4. On the other hand, learned counsel for the legal heirs of deceased submits that on the basis of statement of co-accused Muhammad Umar, the applicants/accused have been associated in the instant crime; that they are involved in the commission of offence and sufficient material is available against them, as such, they are not entitled to the concession of bail.

5. Learned A.P.G. Sindh contends that though the names of the applicants/accused do not appear in the FIR and no specific role has been assigned against them but on the basis of confessional statement specific role has been assigned upon accused Asghar Mari and the applicants/accused have facilitated him. She, however, opposed the bail application

6. I have heard the learned counsel for the parties and perused the record with their able assistance. It is an admitted position names of the applicants/accused do not find place in the FIR. *Prima facie*, no active role of the applicants/accused appears to have committed murder of the deceased. As far as the allegation against the applicants/accused that they have shared the common intention with co-accused or facilitated the main accused in the commission of offence is concerned, it is yet to be determined at the trial. The applicants/accused are behind the bars and no purpose would be served to detain the applicants/accused in incarceration for an indefinite period keeping in view that if after long run if they are acquitted of the charge, nothing will bear their liberty. Further, it is the well-settled principle of law that at the bail stage only a tentative assessment is to be made.

7. In view of the above facts and circumstances, learned counsel for the applicants/accused has made out the case for further inquiry as envisaged in subsection 2 of section 497 Cr.P.C. Consequently, the applicants/accused are admitted to post-arrest bail, subject to their furnishing a solvent surety in the sum of Rs.2,00,000.00 (Rupees two 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 surety[-ies] including cancellation of bail without referring to this Court.

JUDGE