

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Bail Application No.S-264 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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02.05.2023
For orders on office objection.
For hearing of main case.

Mr. Zaheeruddin Sahito, advocate for the applicant.

Mr. Imran Ahmed Abbasi, A.P.G. Sindh.

Mr. Ahsan Gul Dahri, advocate for complainant.

Amjad Ali Sahito, J:- Through instant bail application, the applicant/accused namely Ali Jan seeks post-arrest bail in Crime No.87/2022, registered at Police Station Taluka Nawabshah for the offence under sections 302, 34 PPC. Earlier the bail plea of the applicant/accused was declined by the learned 1st Additional Sessions Judge/MCTC, Shaheed Benazirabad vide order dated 08.12.2022.

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 for the applicant has mainly argued that the applicant/accused is innocent and has falsely been implicated in this case; that the name of the applicant/accused does not transpires in the FIR and no specific role has been assigned against the applicant/accused; that the applicant/accused was previously known to the complainant party as he is brother of co-accused Rajab Ali but he did not nominate him; however, subsequently due to enmity he has been implicated; that the investigation is complete and the applicant/accused is no more required for further investigation. According to him this is a fit case for further inquiry and prayed for grant of bail to the applicant/accused.

4. On the other hand, learned counsel for complainant as well as learned A.P.G. Sindh have vehemently opposed the bail application; however, learned counsel for complainant stated that there is no *mala fide* on the part of complainant, if he had any *mala fide*, the applicant/accused ought to have been nominated in the FIR but subsequently involved in the present case; that his presence at the place of incident is not denied. He further contended that the accused party in order to create pressure upon the complainant party

lodged a serious of FIRs, as such, the applicant is not entitled for concession of bail.

5. Heard and perused.

6. It is an admitted position name of the applicant/accused does not find place in the FIR. *Prima facie*, no specific role has been assigned against the applicant/accused. In the case of 'Qurban Ali v. The State and others' (2017 SCMR 279), whereby the Honourable Supreme Court of Pakistan had granted bail to the accused who had not been attributed any overt act during the occurrence except the role of instigation. In such circumstances, it is the trial Court to determine, after recording pro and contra evidence, whether the applicant/accused was vicariously liable for the acts of co-accused. In another case of 'Mumtaz Hussain and 5 others v. The State (1996 SCMR 1125), the bail was granted to accused on the ground that despite being allegedly armed with deadly weapons. Same was not used in the commission of offence. In the instant case, it is yet to be seen after recording the evidence of prosecution witnesses as to the allegation against the applicant/accused that he has shared the common intention with co-accused in the commission of offence or not. The learned counsel for the applicant/accused has pleaded *mala fide* on the part of complainant. The applicant/accused is behind the bars and no purpose would be served to detain the applicant/accused in incarceration for an indefinite period keeping in view that if after long run if he is acquitted of the charge, nothing will bear his liberty. Further, confinement of the applicant/accused in jail will not improve the case. The investigation is complete and the applicant/accused is no more required for further investigation. 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 applicant/accused has made out the case for further inquiry as envisaged in subsection 2 of section 497 Cr.P.C. Consequently, the applicant/accused is admitted to post-arrest bail, subject to his furnishing a solvent surety in the sum of Rs.1,00,000.00 (Rupees one hundred thousand only) and PR bond in the like amount to the satisfaction of learned trial Court.

8. It is made clear that if the applicant after getting bail will not appear before the trial Court and the trial Court is satisfied that the applicant becomes absconder and fugitive to law, then the trial Court is fully competent to take every action against the applicant/accused and his surety including cancellation of bail without referring to this Court.

JUDGE