

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Bail Application No.S-286 of 2023

| DATE | ORDER WITH SIGNATURE OF JUDGE |
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| <u>17.04.2023</u> | For orders on office objection. For hearing of main case. |
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Mr. Mumtaz Sachal Awan, advocate for the applicant.

Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Amjad Ali Sahito, J:- Through instant bail application, the applicant/accused namely, Mst. Shazia seeks post-arrest bail in Crime No.57/2022, registered at Police Station Market, Hyderabad for the offence under sections 302, 324 114, 34 PPC. Earlier the bail plea of the applicant/accused was declined by the learned MCTC-II/Additional Sessions Judge-IV, Hyderabad vide order dated 02.03.2023.

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 applicant has mainly argued that the applicants/accused is innocent and has falsely been implicated in this case; that the role assigned against the applicant/accused is that she was standing in the street and given Datari to Asif Ali and shouted her to kill Asad Ali otherwise, she has not been assigned any further role and she has not inflicted any injury to Asad Ali; that with *mala fide* and ulterior motives, the applicant/accused has been implicated in this case falsely; that the complainant is not eye witness of the incident and even there is no dying declaration of the deceased Asad Ali. He lastly prayed that the applicant/accused is Jail and she is no more required for further investigation and prayed for grant of bail to her.

4. On the other hand, learned A.P.G. Sindh has vehemently opposed the grant of bail to the applicant/accused and submits that on her instigation, co-accused Asif Ali committed murder of deceased Asad Ali.

5. On the last date of hearing, notice was issued to the complainant and record reflects that it has been served upon him but today he is called absent.

6. Heard and perused the record.

7. Admittedly, the applicant/accused has not caused any injury to deceased Asad Ali. The role assigned against the applicant/accused is that she was present in the street and given Datari to co-accused Asif Ali. So far no specific role has been assigned against the applicant /accused; I am fortified with the decision 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 like rifle, gun and hatchet only caused simple blunt injuries to some of the prosecution witnesses using the wrong side of their weapons. However, in the instant case, the applicant/accused did not cause any injury to the deceased. The applicant/accused is in jail and she is no more required for further investigation. At the bail stage, only a tentative assessment is to be made.

8. 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 her furnishing a solvent surety in the sum of Rs.100,000.00 (Rupees one hundred thousand only) and PR bond in the like amount to the satisfaction of learned trial Court.

9. 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 become absconder and fugitive to law, then the trial Court is fully competent to take every action against the applicant/accused and her surety including cancellation of bail without referring to this Court.

JUDGE