

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.2340 of 2022

<i>Date</i>	<i>Order with signature of Judge</i>
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For hearing of Bail Application.

18.01.2023

Syed Zakir Hussain, Advocate along with Applicants (on bail).
Ms. Rahat Ehsan, Addl. Prosecutor General, Sindh.
M/s. Naseer Ahmed and Muhammad Sagheer Khan, Advocates for the
Complainant.

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicants Jawed Khan and Sherpao Khan seek their admission on pre-arrest bail in Crime No.834/2021 of Police Station Shah Latif Town, Karachi, under Section 147/148/149/302/324/337-A(i) PPC. The applicants preferred their anticipatory bail before the Court of Sessions wherefrom it was assigned to Ist Addl. Sessions Judge/MCTC, Malir Karachi vide Criminal Bail Applications No.2069 & 2302 of 2021, who after hearing the parties, has turned down their request through order dated 29.06.2021.

2. Since the case was already challaned and tried by the 1st Addl. Sessions Judge/MCTC, Malir Karachi vide Sessions Case No.2181/2021 (re-the State Versus Ali Khan and another). In first round of litigation, the trial Court framed charge against co-accused Ali Khan and Muqadar Khan on 25.10.2021 vide Exh.2; however, after conclusion of the trial, both the accused were found innocent and therefore, were acquitted of the charge by way of judgment dated 14.11.2022. The present applicants were shown absconders; however, after acquittal of the co-accused they appeared before the trial Court through Criminal Bail Application No.2069 / 2021 & 2302 / 2022, which by means of order dated 29.06.2021 were declined; hence, instant bail application has been maintained.

3. Since the facts of the prosecution case are already mentioned in the impugned order as well as FIR, which are annexed with the Court file, therefore, there is no need to reproduce the same.

4. Learned counsel for the applicants submits that role attributed to the applicants is similar as that of co-accused, who have already been acquitted and mere allegation against them is of absconsion; however, since they have appeared voluntarily before the trial Court as well as before this Court, therefore, they cannot be termed as absconders; hence, submits that if they will be taken into custody, tomorrow again they will be bailed out on the ground of parity; hence, prays for confirmation of bail.

5. Learned Addl. P.G, Sindh appearing for the State, opposes the bail application on the ground that applicants have remained absent; however, she could not controvert the fact that co-accused on similar role, have already been acquitted from the charges by way of judgment and role attributed to the applicants is similar as of co-accused who have already been acquitted.

6. Learned counsel for the complainant also opposes the bail application on the ground that applicants were granted bail by this Court and later they jumped over the same; however, after acquittal of the co-accused, they have again filed this bail application; hence, they are not entitled for the relief sought for. He; however, could not controvert the fact that the role against them is identical one as that of co-accused, who have already been acquitted of the charge.

7. **Heard arguments and perused record.** No doubt, there are five injured in the case and one of them had lost his life; however, allegation against accused was not specified, therefore, co-accused having similar role have been acquitted of the charge(s) by way of judgment dated 14.11.2022. Nothing incriminating has been brought on record to believe that the applicants have severe role than that of co-accused who have been acquitted. As far as, their previous absconsion is concerned, since they have appeared voluntarily before the trial Court then before this Court, therefore, intention of accused is to be gauged, instead. Once they have appeared and put themselves upon mercy of the Court, they cannot be termed as absconders. As far as rule of parity is concerned, if they will be taken into custody today, tomorrow again they will be bailed out on the ground of consistency. Reliance can be placed upon the case of *MUHAMMAD RAMZAN Versus ZAFAR ULLAH and another* (1986 SCMR 1380).

8. In the circumstances and in view of above, case against the applicants requires further inquiry within meaning of subsection 2 to section 497 Cr.P.C. Consequently, instant bail application is hereby allowed; interim bail granted earlier to applicants **Jawed and Sherpao Khan, both sons of Saleh Khan** on 01.12.2022 is hereby confirmed on same terms and conditions.

9. Applicants present before the Court are directed to continue their appearance before the trial Court without negligence and in case they may misuse the concession or may temper with the prosecution's evidence then the trial Court would be competent to take legal action against them as well to their surety in terms of Section 514 Cr.PC. Trial Court is also hereby directed to make necessary arrangements for securing attendance of the prosecution witnesses and conclude the trial within shortest possible time under intimation to this Court through MIT-II.

10. Let copy of this Order be communicated to trial Court through learned Sessions Judge, concerned. Learned MIT-II to ensure compliance.

JUDGE

Zulfiqar/P.A