

## IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

**Cr. Bail App. No. S – 272 of 2023**  
(*Rahim Bux & another versus The State*)

**Cr. Misc. App. No. S – 279 of 2023**  
(*Asif Ali versus Raza Hussain & others*)

**Cr. Misc. App. No. S – 623 of 2023**  
(*Raheem Bux versus The State & others*)

Date of hearing : **23.10.2023**

Date of decision : **23.10.2023**

Mr. Ameenuddin Khaskheli, Advocate for applicants in Cr. Bail App. No. S-272 of 2023 and Cr. Misc. App. No.S-623 of 2023 and for respondents No.1 to 6 in Cr. Misc. App. No. S-279 of 2023, who has filed a statement with several documents.

Mr. Wajid Mustafa, Advocate holding brief for Mr. Ayaz Ali Gopang, Advocate has filed his power on behalf of applicant Buxial in Cr. Bail App. No. S-272 of 2023.

Mr. Ghulamullah Memon, Advocate for applicant in Cr. Misc. App. No. S-279 of 2023, for complainant in Cr. Bail App. No. S-272 of 2023 and for respondent No.3 in Cr. Misc. App. No.S-623 of 2023.

Mr. Muhammad Iqbal Memon, Advocate for applicant in Cr. Misc. App. No. S-279 of 2023.

Mr. Aftab Ahmed Shar, Additional Prosecutor General.

### **ORDER**

**Muhammad Iqbal Kalhoro, J.** – These three different matters, Cr. Bail App. No. S-272 of 2023 U/S 498 CrPC; Cr. Misc. App. No. S-279 of 2023 filed by complainant for cancellation of bail of respondents; and Cr. Misc. App. No. S-623 of 2023 filed by Rahim Bux, an accused, against the order passed by Civil Judge & Judicial Magistrate-I, Moro dated 24.08.2023, whereby on a negative report U/S 173 CrPC exonerating the accused and arraigning complainant in the case instead, he took cognizance of offences and disagreed with the opinion of the Investigating Officer, are disposed of by this order being interrelated to each other, arising out of same FIR.

2. As per facts in FIR, on 01.03.2023 at about 0500 hours (05:00 a.m.) eight (08) accused, named as above, who are otherwise close relatives of the complainant, barged into his house

situated in Deh Khero Dero, Taluka Moro, District Naushahro Feroze. Then, on account of a previous enmity stirred in the wake of murder of brother of Rahim Bux, namely Ameer Bux, by the complainant party, applicant Rahim Bux fired straightly on uncle of complainant namely Dildar. Then applicant Buxial fired from his rifle on his chest, whereas respondents Qalab Ali and Munawar Ali also fired on Dildar, hitting wrists of both his left and right arms. While the above named accused were firing at the victim, the other accused were, turn by turn, holding him in order to facilitate the above named accused to hit him straightly. The FIR was registered on the same day at about 1945 hours.

3. In the first investigation, applicants were declared innocent. It was suspected by the IO that complainant party itself was guilty of murdering Dildar and camouflaging it in order to settle score with the accused party, and to exert pressure upon them to either compromise with them or to withdraw FIR bearing Crime No.29 of 2021, registered in respect of murder of Ameer Bux, a brother of applicant Rahim Bux, against them. Hence, he disposed of the case under 'A' class. However, when the report was submitted before the Magistrate concerned, he ordered for re-investigation vide order dated 17.04.2023. In compliance, the re-investigation was conducted but this time by a senior police official: Deputy Superintendent of Police. In the course, he collected CDR of complainant and PWs, examined DWs, got geofencing of the area done, and sent the bullet recovered from the body of the deceased to ballistic expert for a report. All such pieces of evidence, when connected by him, led to an inference that the offence was committed by the complainant party and not by the accused. The complainant and PWs on examination of CDR were not found present at the spot at the relevant time. The bullet recovered from the body of the deceased was found fired from a pistol of .30 bore and not from a rifle as alleged in FIR, and the DWs testified having seen the complainant party taking away the deceased on the fateful day. Hence, the second Investigating Officer also concluded that the offence was in fact committed by the complainant party to

exert pressure upon the accused to come into terms with them and withdraw their case against them.

4. Nonetheless, when this report was submitted before the Magistrate, he disagreed with the same and took cognizance of the offence against the accused and let off the complainant party made accused accordingly by the IO. Consequently, when the bail application was filed by the accused, the trial Court on account of direct role of applicants Rahim Bux and Buxial dismissed their application, whereas granted bail to remaining accused. Applicants Rahim Bux and Buxial, therefore, have filed application for pre-arrest bail (Cr. Bail App. No. S-272 of 2023), whereas complainant has filed Cr. Misc. App. No.S-279 of 2023 for cancellation of bail of remaining accused. The order, whereby cognizance of the offence has been taken by the Magistrate, as state above, has also been challenged in listed miscellaneous application.

5. I have heard the parties. Applicants' Counsel in addition to above facts and grounds has submitted that consequent to above developments, one Fida Hussain filed a Direct Complaint of murder of Dildar against the complainant party, which, after a preliminary inquiry, has been brought on regular file by the relevant Court and complainant of this case has been made accused of the murder of a person who he has alleged in the FIR to have been murdered by applicants. He has obtained bail in that case; and therefore, this is a case of two versions and requires further enquiry. *Mala fide* on the part of complainant, in view of above facts and grounds, also cannot be ruled out, as it has been concluded by the different IOs that the deceased was done to death by them and the allegation of which they have leveled against the applicants for the purpose of extracting compromise in the murder case.

6. On the other hand, complainant's Counsel have supported the order of taking cognizance of the offence by the Magistrate against the accused and have further submitted that in view of direct role of the applicants, they are not entitled to the concession of pre-arrest bail.

7. Learned Additional Prosecutor General has, however, submitted that this is a case of two versions. Applicant and complainant party both have been made accused in the murder of the same person and are standing trials respectively against such charge. Therefore, the case requires further inquiry, and in view thereof, *mala fide* on the part of complainant cannot be ruled out. He has further stated that since in three inquiries/ investigations; first two pursuant to FIR and the third when the enquiry in the Direct Complaint was referred to one DSP, the applicants were found not involved in the offence, their custody is not required and he has no objection to confirmation of their bail.

8. The aforesaid reproduction of facts shows that the case in hand is of two versions. In two investigations and one inquiry into the allegations leveled by the complainant against the accused conducted by different senior police officials, the applicants have not been found involved. The CDR collected by the IOs found the complainant and PWs present at some other place, which is said to be the actual place of incident, where, according to investigation reports, the deceased was done away with by the complainant party itself for exerting pressure upon the accused party to come to terms with them in the murder case. When three different investigations/inquiries have, *prima facie*, resulted in lack of collection of incriminating material against the applicants, their case would require further inquiry and despite a direct role assigned to them, they would be held entitled to concession of bail.

9. Because, it may be stressed, whatever is stated in FIR cannot be treated as a gospel truth. FIR is only information of some offence given by a person to the police for the first time, which always requires investigation to confirm its authenticity. When the investigation does not confirm the story of FIR and *prima facie* no evidence is found against the accused, the case of further inquiry into allegations would be made out. More so, in this case, after a due process, the complainant himself has been made accused of the murder of the same person who he alleges was murdered by the applicants. Therefore, *mala fide* on his part to implicate the applicants falsely also cannot be ruled out.

10. Accordingly, Cr. Bail App. No. S-272 of 2023 is **allowed** and ad-interim pre-arrest bail earlier granted to applicants Rahim Bux and Buxial, vide order dated 03.05.2023, is hereby **confirmed** on the same terms and conditions. Consequently, Cr. Misc. App. No. S-279 of 2023 filed for cancellation of bail of remaining accused is **dismissed**. At this juncture, learned Counsel for applicant in Cr. Misc. App. No. S-623 of 2023 does not press the application and submits that he would file a relevant application before the trial Court for seeking relief in accordance with law. Therefore, this application is accordingly **disposed of** in the above terms **as not pressed**.

11. The observations made hereinabove are tentative in nature and shall not influence the trial Court while deciding the case on merits.

All listed matters stand **disposed of** in the above terms. Office to place a signed copy of this order in the captioned connected matters.

Abdul Basit

J U D G E