

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail App. No. S – 144 of 2023

Cr. Bail App. No. S – 385 of 2023

Date of hearing	Order with signature of Judge
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For hearing of bail application

1. For order on office objection at Flag-A
2. For orders on CMA No.1438/2023 (E/A)
3. For hearing of bail application

30.10.2023

Mr. Ishfaq Ahmed M. Siyal, Advocate for applicants in Cr. Bail App. S-144 of 2023 along with applicants, who has filed a statement along with several documents.

Mr. Ali Asghar K. Panhyar, Advocate for applicant in Cr. Bail App. No. S-385 of 2023.

Mr. Shabbir Ali Bozdar, Advocate for complainant along with complainant.

Mr. Aftab Ahmed Shar, Additional Prosecutor General.

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Muhammad Iqbal Kalhoro, J. – Allegedly, parties were on inimical terms on account of freewill marriage of Mst. Parwaza D/o Sikandar Ali with Zahoor Ahmed, cousin of the complainant. On 28.01.2023, when complainant was present in his house along with PWs, applicants and co-accused Farzand Ali, 08 in number, armed with deadly weapons barged in it. Applicant Sikandar Ali demanded his daughter but when was given a reply that she had married with Zahoor Ahmed, instigated others to commit murder of the complainant party. Upon which, co-accused Farzand Ali (in custody) and applicant Muneer directly fired upon Shahid Ali alias Siraj hitting his vital parts. Applicant Zulfiqar Ali then fired from a pistol on complainant's father Sher Muhammad and applicant Nazeer Ahmed caused him *lathi* blow. Thereafter, they left the scene and FIR was accordingly lodged.

2. Learned defence Counsel submits that this FIR is counterblast of FIR No.29 of 2023 registered by applicant Zulfiqar Ali regarding abduction of his niece; that applicants have been falsely implicated in this case; that applicants Muneer Ahmed, Sikandar Ali, Zulfiqar Ali, Nazeer Ahmed and Umar Ali were present before the Court of Additional Sessions Judge, Ghotki in some bail application on the day of incident, whereas, applicant

Manzoor Ahmed, who is Assistant Sub-Inspector, was present before Additional Sessions Judge, Khairpur on the day of incident for the purpose of evidence; that in this matter, four (04) enquiries have been conducted by different police officials, who have found the applicants innocent on the basis of aforesaid plea of alibi. They further submit that there is a delay of one day in registration of FIR, which has not been explained although the distance between Police Station and place of incident is about 15/16 kilometers. They have relied upon the cases of *Naqi Hussain Shah v. The State* (1992 SCMR 600), *Muhammad Riaz v. The State and another* (1995 SCMR 1143), *Abdul Kareem alias Kareem Bux and 4 others v. The State* (2005 P Cr. L J 17), *Suba Khan v. Muhammad Ajmal and 2 others* (2006 SCMR 66), *Amjad Ameen v. The State* (2010 YLR 2993), *Zaigham Ashraf v. The State and others* (2016 SCMR 18), *Sami ullah and another v. Laiq Zada and another* (2020 SCMR 1115), *Khair Muhammad and another v. The State through P.G. Punjab and another* (2021 SCMR 130), *Muhammad Irfan v. The State and others* (2014 SCMR 1347), *Zoor Zameen Gul and another v. The State* (2019 P Cr. L J Note 66), *Sher Muhammad alias Shero v. The State* (2019 MLD 1250), *Mumtaz Ali v. The State* (2022 P Cr. L J 400) and *Abdul Khalique v. The State* (2023 P Cr. L J 323).

3. On the other hand, learned Counsel for the complainant has opposed bail to applicants relying upon the cases of *Ghulam Ahmed Chishti v. The State and another* (2013 SCMR 385), *Abu Bakar Siddique v. The State and others* (2021 SCMR 5) and *Ghulam Qadir v. The State* (2022 SCMR 750). Learned Additional Prosecutor General has also opposed bail to applicants who have been assigned specific role, and has given no objection in favour of applicants who have not been assigned any role. He further submits that enquiries were conducted behind the complainant, who was never asked to join the same, and more so, the documents of alibi produced in defence were never entrusted to the Investigating Officer for confirmation, and the officials who had issued such certificates never presented themselves for investigation.

4. I have considered submissions of parties, perused material available on record and taken guidance from the case law. Insofar

as 04 enquiries are concerned, the legality of which is yet to be determined because after FIR, the law envisages only investigation and not enquiry. Therefore, it is to be explained under what law enquiries were conducted to confirm authenticity of FIR. It is, however, apparent from the record that outcome of these enquiries was not submitted before the Magistrate along with investigation report nor they are part of the prosecution's case.

5. The Investigating Officer on the other hand has *prima facie* found the applicants guilty of the offence, and in support, has recorded 161 CrPC statements of the witnesses and produced the medical evidence. Shahid Ali, who was injured at the hospital, had died subsequently on 08.03.2023 after more than one and half month. His statement was also recorded by the IO and he had also implicated the applicants in the offence as alleged against them. Enmity between the parties is double edged weapon, it cuts both the ways, and is to be appreciated on the basis of material that as to who has been worked up by it to take law into his hands.

6. The material available on record points out involvement of accused Farzand Ali, Muneer Ahmed, Zulfiqar Ali and Nazeer Ahmed in the offence. They have been directly assigned the role of causing fatal injuries to the deceased or to PW Sher Muhammad, whereas, the remaining applicants have not been assigned any role except merely being present at the spot. Their presence without active part will require further enquiry into the question of their sharing of common intention, which is for the trial Court to address. More so, learned Additional Prosecutor General has also rightly pointed out that in this part of province, the trend to throw wide net to implicate all the family members in criminal cases is rampant, and therefore, for applicants who have not been assigned any role, false implication cannot be ruled out.

7. Accordingly, in view of above, bail application of applicants Muneer Ahmed, Zulfiqar Ali and Nazeer Ahmed is **dismissed** on account of their direct role supported by 161 CrPC statements of witnesses and medical evidence and order dated 06.03.2023, whereby interim pre-arrest bail was granted to them, is hereby recalled, whereas, interim pre-arrest bail of applicants Manzoor Ahmed, Sikandar Ali and Umar Ali, earlier granted to them vide

order dated 06.03.2023, is hereby **confirmed** on the same terms and conditions. Applicant Kareem Dad is also **granted** post-arrest bail subject to furnishing a solvent surety in the sum of Rs.1,00,000/- (Rupees one lac) and P.R. bond of the same amount to the satisfaction of the trial Court.

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

The bail applications stand **disposed of** in the above terms. Office to place a signed copy of this order in the captioned connected matter.

Abdul Basit

J U D G E