

ORDER SHEET

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Cr. Bail App. No. S – 125 of 2023**

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

1. For orders on office objections at Flag-A
2. For orders on MA No.1271/2023
3. For hearing of bail application

**08.12.2023**

Mr. Achar Khan Gabol, Advocate for applicant.  
Syed Murad Ali Shah, Advocate for complainant.  
Mr. Zulfikar Ali Jatui, Additional Prosecutor General.

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**Muhammad Iqbal Kalhoro, J.** – Allegedly on account of murderous enmity, applicant along with five co-accused, duly armed with weapons, riding on three motorcycles, waylaid complainant party comprising four persons, riding on two motorcycles, at a link road near Hassan Shah Bukhari shrine on 23.04.2022 at 1100 hours. Applicant allegedly armed with a rifle fired along with co-accused on Imam Bakhsh, whereas, other co-accused named in FIR fired on Aijaz. Both, critically injured having multiple firearm injuries, were taken to hospital but could not survive and died on 23.04.2022 at 1400 hours. Hence, complainant appeared at Police Station on next day and registered FIR. Applicant was arrested on 24.05.2022 after about one month, and from him an unlicensed rifle was recovered, which along with empties was sent for forensic science lab report, and at least one empty recovered from the spot was found matched with it.

2. Learned Counsel in defence has argued that in the inquest reports no name of accused is mentioned by the complainant, and it is stated by him that the crime was committed by unknown accused. There is a contradiction in medical evidence and oral account furnished by the complainant party. There is delay of one day in registration of FIR, which has not been properly explained; that along with applicant another accused was arrested from whom also a rifle was recovered, both the rifles were sent to lab for examination and one rifle was not found to have matched with any crime empty, hence, at least one accused is innocent; that there is an FIR registered against the complainant party, and in order to

settle score with the applicant party, this FIR has been registered. There are joint allegations against the applicant and co-accused. He has relied upon the cases reported in **2007 SCMR 482**, **2014 SCMR 12**, **2017 SCMR 538**, **2019 MLD 4**, **2020 P Cr. L J Note 89**, **2021 SCMR 2011** and **2021 MLD 1551** in support of his arguments.

3. Learned Counsel for complainant and Additional Prosecutor General both have opposed bail to the applicant on the ground that he is specifically nominated in FIR, and both the rifles were found to have been used in the crime.

4. I have considered submissions of parties and perused material available on record and taken guidance from the case law cited at bar. The name of the applicant appears in FIR with specific role of causing firearm injury to deceased Imam Bakhsh along with co-accused, who was found to have received eight firearm injuries. Applicant was arrested in the investigation and a rifle allegedly used in crime was recovered from him, which was found to have matched with one empty recovered from the place of incident.

5. As to the ground that in the inquest report the accused are shown unknown is concerned, suffice it to say that inquest report is not a substitute of FIR, nor it can be cited for comparison with FIR U/S 154 CrPC for the purpose of challenging authenticity of the latter. Inquest reports are prepared always by the police officials, and it is not necessary, nor a requirement, that the entries in the inquest report should be a reflection of the verbatim statement of the complainant. Even otherwise, this question, as it has deep connotations, cannot be decided on the basis of material available on record summarily, unless evidence is recorded and such facts are put to relevant witness in cross-examination. *Prima facie*, there are reasonable grounds to conclude that applicant is involved in the alleged crime, in which at least two persons in their youth have been murdered on account of previous enmity. The case has been challaned, and it has been informed that the charge has been framed, but currently, the Presiding Officer has been suspended, as such the trial is not proceeding.

6. Therefore, at this juncture, all the Counsel, present in Court, have jointly submitted that keeping in view suspension of Presiding

Officer, and the fact the case is not likely to be commenced, and since the accused are in jail and complainant party is ready to give evidence, the case may be transferred to Additional Sessions Judge at Kandiaro.

7. In view of above, while dismissing the bail application on merits, as above, Sessions Case No.482 of 2022 (*Re: The State versus Waseem Mari and others*) is withdrawn from the file of Additional Sessions Judge-I / MCTC, Naushahro Feroze and transferred to Additional Sessions Judge, Kandiaro with the direction to record evidence of the witnesses within three (03) months, and thereafter, in any case, the applicant would be at liberty to move a fresh application for bail before the trial Court, which shall be decided in accordance with law, independent of the previous orders including the present one.

The bail application stands **disposed of** in the above terms, and the findings are tentative in nature and not meant to affect merits of the case before the trial Court.

J U D G E

Abdul Basit