

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Bail Application No.2304 of 2023

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Date

Order with signature of Judge

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For hearing of bail application

**22.12.2023**

Mr. Bashar Naveed advocate for the applicant  
Mr. Fida Muhammad Khan advocate for the complainant  
Mr. Talib Ali Memon, Assistant PG

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The applicant Muhammad Irshad seeks post-arrest bail in FIR No.1277 of 2023 punishable for offences under Section 302/109/34 PPC PS Shah Latif Town Karachi. His earlier bail plea was declined by the learned VIII-Additional Sessions Judge Malir Karachi on the premise that the applicant has remained an absconder and was directly charged with murdering the deceased Bahadur Khan

2. The accusation against the applicant is that on 05.11.2022, he along with his accomplices fired upon the Bahadur Khan who succumbed to the injuries and died, such report of the incident was lodged at PS Shah Latif Town on the next day.

3. It is contended by learned counsel for the applicant that the applicant has been falsely implicated in this case by the Police; there is apparent malafide on the part of the complainant and police; the applicant was not nominated in the FIR and was implicated subsequently merely based on his confessional statement; it is well-settled that the concession of bail cannot be declined on such ground; there is no independent and/or incriminating evidence against the applicant, therefore, the matter requires further inquiry; the applicant has no previous criminal record; the final charge sheet has been submitted before the trial Court; and, there is no apprehension that the evidence will be tampered with or the witnesses will be influenced by the applicant, or he will abscond if he is released on bail.

4. On the other hand learned Assistant P.G. assisted by learned counsel for the complainant has submitted that the complainant in his further statement had specifically implicated the applicant / accused and others on the premise that he heard from the elders of the area that the applicant confessed his guilt before them thus the applicant was arrested in the subject crime based on his statement. The allegations of malice have been denied by the complainant. Likewise, malice on the part of the police

has been denied by learned Assistant P.G. They concede that no recovery was made from the applicant; the investigation in this case has been completed; and, the final charge sheet has been submitted before the learned trial Court.

5. I have heard learned counsel for the applicant and complainant and the learned Assistant. P.G. and have also examined the material available on record, particularly the police papers submitted by learned Assistant P.G.

6. It is an admitted position that no recovery whatsoever was made from the applicant and except further statement of the complainant and purported confessional statement of the applicant before the police; there is no other, independent or incriminating material against the applicant to corroborate the said confessional statement.

7. Prima facie involvement of the applicant based on the further statement of the complainant cannot be determined at the bail stage merely based on the confessional statement of the accused before the Police without any other independent incriminating material corroborating the confessional statement. The applicant has made specific allegations of enmity and malice on the part of the complainant and Police. In the above circumstances, this is a case which requires further inquiry.

8. Admittedly, the investigation in this case has been completed and the final charge sheet has been submitted before the trial Court. Therefore, the applicant shall not be required for any further investigation, and there is no question or probability that the evidence will be tampered with by him or that the prosecution witnesses will be influenced by him if he is enlarged on bail. The guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence that will be produced by the prosecution and the defense before the trial Court.

9. In principle bail does not mean acquittal of the accused but only change of custody from police to the sureties, who on furnishing bonds take responsibility to produce the accused whenever and wherever required to be produced. On the aforesaid proposition, I am fortified with the decision of the Supreme Court on the case of Haji Muhammad Nazir v. The State (2008 SCMR 807).

10. It is a settled principle of law that the benefit of the doubt can be even extended at the bail stage. Reliance is placed on Muhammad Ejaz v. The State (2022 SCMR 1271), Muhammad Arshad v. The State

(2022 SCMR 1555), and *Fahad Hussain v. The State* (2023 SCMR 364).

11. The statement of the accused in all fairness is just a statement, hence, no deviation can be made against the established principle of law that the statement of one accused cannot be used against the other in the absence of any attending material produced by the prosecution. Mere abscondance in a criminal case is no valid justification to refuse bail if the applicant succeeds on merits.

12. In view of the above, the applicant / accused Muhammad Irshad is admitted to post-arrest bail in FIR No.1277 of 2023 punishable for offenses under Section 302/109/34 PPC PS Shah Latif Town Karachi subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees one hundred thousand only) and a P.R. bond for the same amount to the satisfaction of the learned trial Court. The trial court is directed to examine the complainant on the date of hearing so fixed by the trial Court within one month. MIT-II is directed to seek compliance of this order within time.

13. It is clarified that the observations made herein are tentative which shall not prejudice the case of either party nor shall they influence the learned trial Court in any manner in deciding the case strictly on merits under law.

JUDGE

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