

**IN THE HIGH COURT OF SINDH, CIRCUIT  
COURT HYDERABAD**

*Cr. Bail Application No.S-368 of 2023*

**Applicant:** Naseer Khan @ Porho S/o Noor-ud-Din,  
Through Mr. Ghulam Shabbir Mari,  
Advocate.

**Complainant:** Khalid Hussain,  
Through Mr. Imtiaz Ali Channa.  
Advocate.

**The State:** Through Mr. Nazar Muhammad Memon,  
Additional P.G Sindh.

**Date of Hearing:** 17.07.2023

**Date of Order:** 17.07.2023

**ORDER**

**ARBAB ALI HAKRO, J.-** Through this bail application under Section 497 Cr.P.C., the applicants/accused Naseer Khan @ Porho, son of Noor-ud-Din, seeks admission to post-arrest bail in Crime No.64 of 2022 registered against him on 07.11.2022 at P.S Sarhari, District Sanghar, under Sections 322, 114, 337-A(i), A(ii) 337-L(ii), 337-F(i), 34 P.P.C. The applicant/accused had previously applied for post-arrest bail before the trial Court, and the same was dismissed by the learned Additional Sessions Judge, Shahdadpur, vide order dated 07.04.2023. After that, the applicant/accused approached this Court.

2. Briefly stated, the accusation against the applicant is that he, along with co-accused, duly armed with a baton, perpetrated a violent assault on the complainant party resulting in the death of

Ali Dost (brother of the complainant) and injuries to the complainant and P.W. Shaman Ali.

3. At the very outset, it has been argued by learned counsel for the applicant that the applicant has been falsely roped in this case against the facts and circumstances. Contends that the crime report was lodged after a delay of one day, for which no plausible explanation has been given. Asserts that there are general allegations and no specific role has been assigned to the present applicant. Contends that the Final Medical Certificate of the deceased Dost Ali shows that he has not died an unnatural death. Argued that the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C. Contends that no independent witness cited in the case and all the witnesses are interested. Contends that there is no previous criminal record of the applicant. In support of his contentions, he relied upon case law reported in **2020 YLR 1045, 2021 SCMR 138, 2018 Y.L.R. N 283, 2012 YLR 1889, 2007 YLR 2832, 1994 PLD SC 65, 2005 Y.L.R. 1968, 2021 Y.L.R. 1958 and 2017 N 339.**

4. On the other hand, learned A.P.G. appearing for the State opposes the application on the ground that the applicant has been nominated in F.I.R. with the specific role of causing a baton blow to the complainant party.

5. Learned counsel for the complainant vehemently opposed the contentions raised by the learned counsel for the applicant and submitted that applicant is directly nominated in the F.I.R. Prosecution witnesses prima facie link the applicant with the

alleged offence. Further contends that serious injuries have been caused to the injured/victims. Argues that I/O, during the investigation, has collected sufficient material connecting the applicant with the commission of the alleged offence. Therefore, the applicant does not deserve a concession of bail.

6. I have heard learned counsel for the applicant and learned Additional Prosecutor General as well as learned counsel for the complainant, so also have carefully examined the material available on record. According to the First Information Report (F.I.R.), the alleged incident transpired on 06.11.2022 at 1545 hours. However, the corresponding report was lodged on 07.11.2022 at 1400 hours, indicating a delay of approximately one day, despite the relatively short distance of approximately 8-9 kilometres between the Police Station and the place of the occurrence. The prosecution has not provided any reasonable explanation for the delay. It has further been noticed that the Final Postmortem Report dated 21.12.2022 indicates no indications of a non-natural demise for the late Ali Dost. No marks of violence have been detected on the body of the deceased, thus suggesting that the prosecution's account does not align with the medical findings.

7. According to the crime report, the applicant and his accomplices allegedly armed with batons and violently attacked the complainant and P.W. Shaman Ali, resulting in injuries to both individuals. Nevertheless, it is worth mentioning that the applicant has been ascribed to a general role sans any elucidation regarding the individual amongst the accused who inflicted blows to the complainant party. A bare perusal of the medico-legal reports of

injured reveals that the Medical Officer declared the injuries as "Shajjah-i-Khafifa", "Shajjah-i-mudihah", "Ghair Jaifah Damiyah" falling under Section 337-A(i), A(ii), F(i) and F(ii) P.P.C. which are bailable except offence under Section 337-A(ii) P.P.C. which entails punishment upto 05 years and does not fall within the prohibitory clause of Section 497 Cr.P.C. Furthermore, the investigation has been completed. The applicant is no more required by the police for further investigation. He has been incarcerated since his apprehension. In this context, I am fortified by the case of **Kaleemullah v. The State and others (2017 SCMR 19)**, wherein the Apex Court has held as under;-

*"After hearing the learned counsel for the parties and going through the record we have observed that in the F.I.R. as many as ten persons had been implicated by the complainant and during the investigation seven of such accused persons had been exonerated. As regards the present petitioner no specific injury had been attributed to him. As out of the ten accused persons mentioned in the F.I.R. seven persons already stand exonerated during the investigation, therefore, the question regarding culpability of the present petitioner requires further probe at this stage. The investigation of this case has already been finalized and a Challan has been submitted and despite framing of a charge by the trial court no prosecution witness has so far got his statement recorded during the trial. The petitioner is behind the bars since 04.06.2015 and his continued incarceration is not likely to serve any beneficial purpose at this stage."*

8. Considering the above facts and circumstances, the applicant has succeeded in making out a case for the grant of bail on the ground of further inquiry as contemplated under section 497(2),

Cr.P.C. Consequently, the applicant is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Lac) and P.R. bond in the like amount to the satisfaction of learned trial Court.

9. Needless to add, the observations made hereinabove are tentative only to decide this bail application, which shall not in any manner influence the trial court at the time of final decision of the subject case.

JUDGE

Shahid