

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI
Cr. B.A. No. 164 of 2023

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

21.07.2023

Mr. Muhammad Akram Khan, Advocate for the applicant.

Mr. Asad Sherwani, Advocate holding brief for Mr. Rasheed Ashraf Mughal, Advocate for complainant.

Mr. Faheem Panhwar, DPG.

1. Applicant Muhammad Shareef son of Abdul Shakoor, is seeking post arrest bail in FIR No.212/2022, under Section 302, 109, 34 PPC, at P.S. Gulshan-e-Maymar, Karachi.

2. The allegation against the applicant/accused is that he in conjunction with his allies committed murder of Abdul Sattar.

3. Learned counsel for the applicant/accused premised his case on the argument that the applicant/accused is not nominated in the FIR. He further contended that neither named in the FIR nor has been described with specific role of firing upon the deceased. He further contended that the applicant/accused was named in the additional statement recorded under Section 164 Cr.P.C which makes the case of the applicant/accused further probe, therefore, applicant/accused be enlarged on bail

4. On the other hand, learned D.P.G. argued that applicant/accused has committed a heinous offence which is not bailable and that the learned trial Court in the impugned order also observed this fact, therefore, the applicant/accused is not entitled for concession of bail.

5. I have heard the submissions of learned counsel for the applicant as well as learned APG and scanned the available material. It is patently clear that the complainant is not eye witness of the alleged incident. It further unfurls from evaluating the available record that the applicant/accused was named in the case in a further statement recorded by the Magistrate which fact will be adjudged at the time of trial. The prosecution story is only on hearsay evidence which creates a doubt at this stage. The perception and discernment of the expression “further inquiry” is a question which must have some nexus with the result of the case and it also pre-supposes the tentative assessment which may create doubt with respect to the involvement of accused in the crime. The *raison d'etre* of setting the law into motion in criminal cases is to make an accused face the trial and not to punish an under trial prisoner or let him rot behind the bars. It is a well settled principle of the administration of justice in criminal law that every accused is innocent until his guilt is proved and this benefit of doubt can be extended to the accused even at the bail stage, if the facts of the case so warrant¹. The basic philosophy of criminal jurisprudence is that the prosecution has to prove its case beyond reasonable doubt and this principle applies at all stages including pre-trial and even at the time of deciding whether accused is entitled to bail or not which is not a static law but growing all the time, moulding itself according to the exigencies of the time. In order to ascertain whether reasonable grounds exist or not, the Court should not probe into the merits of the case, but restrict itself to the material placed before it by the prosecution to see whether some

¹ *Per Muhammad Ali Mazhar J. in Fahad Hussain v. The State (2023 SCMR 364)*

tangible evidence is available against the accused person(s). Reasonable grounds are those which may appeal to a reasonable judicial mind, as opposed to merely capricious, irrational, concocted and/or illusory grounds. However, for deciding the prayer of an accused for bail, the question whether or not there exist reasonable grounds for believing that he has committed the alleged offence cannot be decided in a vacuum.

6. I have cautiously scanned and ruminated the material placed on record and reached to a tentative assessment that the case of the prosecution can only be resolved and determined by the trial court after full-fledged trial of the case but keeping in view the present set of circumstances, the case of the applicant/accused requires further inquiry.

7. As a result therefore, this bail application is allowed. Applicant Muhammad Shareef son of Abdul Shakoor is granted bail subject to furnishing solvent surety in the sum of Rs.50,000/- (rupees fifty thousand) with P.R bond in the like amount to the satisfaction of Nazir of learned trial Court.

8. Before parting, if the applicant after getting bail fails to appear before the trial Court and the trial Court is satisfied that the applicant has misused the concession of bail and became absconder then the trial Court is fully authorised to take every action against the applicant and his surety including cancellation of the bail without making a reference to this Court.

JUDGE