

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI
Cr. B.A. No. 220 of 2023

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

11.07.2023

M/s.Zahooruddin Mehsood and M. Adnan, Advocates for the applicant.
Mr. Salahuddin Khan Gandapur, Advocate for the complainant a/w Mr.
Sabir Shah, Advocate.
Mr. Talib Ali, APG.
Applicant Sakhi Muhammad, Advocate is also present.

1. Applicant Sakhi Muhammad son of Nawab Khan, is seeking pre-arrest bail in FIR No.1153/2023, under Section 324/34 PPC, at P.S. Sohrab Goth, Karachi.
2. The allegation against the applicant/accused is that he in conjunction with his allies made firing upon the cousin of the complainant with intention to commit his murder.
3. Learned counsel for the applicant/accused premised his case on the argument that the other co-accused have been enlarged on bail, therefore, the applicant/accused is also entitled for concession of bail on the rule of consistency. While concluding his submissions, he submitted that the complainant is not the eye witness of the incident, neither he had seen the applicant/accused doing firing upon the victim nor the victim is the complainant of the alleged incident, therefore, the applicant/accused is entitled for concession of bail.
4. On the other hand, learned counsel for the complainant assisted by learned Addl. P.G. argued that applicant/accused has to prove the

pre-requisite of pre-arrest bail application while availing the benefit of pre-arrest bail application. He further contended that the applicant/accused is named with the FIR and that enlargement of other co-accused on bail is not a ground 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 neither eye witness of the alleged incident nor the victim is the complainant in this case. Learned counsel for the applicant/accused produced the deposition of complainant recorded by the learned trial Court wherein he admitted during course of cross-examination that he is not the eye witness of the alleged incident. It is also a matter of record that other malefactors have also been enlarged on bail, therefore, the present applicant/accused is also entitled to the benefit of rule of consistency.

6. 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 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.

7. 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.

8. In view of the above discussion, the ad-interim pre-arrest bail granted to the applicant/accused vide order dated 30.01.2023 is hereby confirmed.

8. Before parting, the trial Court is directed to conclude the trial preferably within a period of 90 days. Furthermore, if the applicant

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

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

Aadil Arab