

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S – 325 of 2023

Cr. Bail Appln. No. S – 473 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGE

Hearing of bail application

1. For orders on office objection at Flag 'A'
2. For hearing of bail application-n

28.08.2023

Mr. Iqbal Hussain Joyo, Advocate along with Applicants in both matters
Mr. Shafi Muhammad Mahar, Deputy Prosecutor General for the State

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ORDER

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MUHAMMAD IQBAL KALHORO, J.- These are two bail applications, one is for pre-arrest bail (Cr.Bail Appln.No.S-325/2023) filed by *Ghulam Hussain and others* present on interim pre-arrest bail and another is post-arrest bail (Cr.Bail Appln.No.S-473/2023) filed by applicant *Punhal*, who is in jail in Crime No.43/2023 of Police Station Kandhra, District Sukkur for offences under Sections 395, 324, 147, 148, 149, 504, 506/2 and 337-H(2) PPC. The applicants have been alleged to have committed robbery from complainant and his two uncles near his village on 21.04.2023 at 6:00 pm and on their resistance allegedly made firing hitting a passerby, namely, Sapna Kumari D/o Natho and injured Zahid Hussain S/o Ghulam Qadir with the butt of K.K.

2. Learned counsel in defence has argued that the applicants are innocent and have falsely been implicated in this case; that this is a counter-blast of Crime No.60/2022 at same police station registered by applicants' party against the complainant party; that no such incident has happened and the story has been concocted to settle score with applicants. In support of his contentions, he has relied upon the ***cases of Muhammad Nawaz alias Karo v. The State (2023 SCMR 734); Salman Zahid v.The State through PG Sindh (2023 SCMR 1140); Hilal Khattak v. The State and another (2023 sCMR 1182); Hafiz Fayyaz Samoo and another vs.***

Special Court, Sindh Public Property Removal of Encroachment and others (PLD 2021 [Sindh] 173); Reginald Chude Bjekwe Nigerian National v. The State and another (2021 MLD 2028); Shah Fahad v. The State and another (2021 YLR 449) and Faheem v. The State and another (2021 YLR 1680)

3. On the other hand, learned Deputy PG for the State has opposed grant of bail to the applicants.

4. I have considered submissions of parties and perused material available on record. In the FIR, the applicants and co-accused are assigned the role of committing robbery and injuring two witnesses, namely, Sapna Kumari with firearm and Zahid Hussain with the butt blow. Both the witnesses in their 161 Cr.P.C statements have *prima facie* supported the incident and having sustained injuries. Learned counsel submits that they have simply stated about the quarrel between the parties and have not said a word about committing robbery. It may be stated that this point requires deeper appreciation of evidence, which cannot be undertaken at this stage. However, what is apparent is that they have *prima facie* revealed the incident, more or less, in the manner, as alleged by complainant. They, being passerby were not supposed to observe minutely every aspect of the incident, not least when they became victim of firing made by the accused. Further, the Investigating Officer recovered 03 empties of 12 bore, 05 empties of Kalashnikov and 03 empties of TT Pistol from the place of incident, which *prima facie* in line with the allegations of firing at least by the accused. No case for bail either pre-arrest or post-arrest in presence of reasonable grounds as above against the applicants is made out.

5. Accordingly, these bail applications are dismissed. The interim pre-arrest bail granted to the applicants in Cr. Bail Application No.S-325/2023 vide dated 23.05.2023 is hereby recalled. The trial Court is, however, directed to examine material witnesses within a period of three

months insofar as the applicant, namely, Punhal, who is in jail is concerned, after which he may file a fresh bail application before the trial Court for the same relief, which however shall be decided on its own merits. The case law relied upon by learned defence counsel are distinguishable and not applicable in this case.

6. The observations made therein above are tentative in nature and will prejudice the case of either party at trial.

Office is directed to place a signed copy of this order in the connected captioned matter.

Judge

ARBROHI