

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Cr. Bail Application No.S-162 of 2023

Date	Order with signature of Judge
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Applicant: Afzal Khan @ Afzal Mazari, through
Mr. Shabbir Ali Bozdar, Advocate

Complainant: Nemo

Respondent: The State through Mr. Imran Mobeen Khan
Assistant Prosecutor General

Date of hearing: **18-08-2023**

Date of **Decision**: **18-08-2023**

O R D E R

Arbab Ali Hakro, J: Through this bail application u/s 497 Cr. P.C., applicant Afzal Khan @ Afzal s/o Muhano Khan seeks admission to post-arrest bail in Crime No.04/2023, registered against him on 18.01.2023, at Police Station Wasti Jeewan Shah, District Ghotki, u/s 324, 353, 368, 148 and 149 PPC. The applicant had previously applied for post-arrest bail in Bail Application No.335/2022, but the same was dismissed by the learned Additional Sessions Judge/MCTC Ubauro, vide order dated 27.02.2023. After that, the applicant approached this Court.

2. The case of the prosecution is set up in the subject FIR is that on 18.01.2023, at about 1130 hours, a police party of Police Station Wasti Jeewan Shah comprising ASI Faizullah Kosh, HC Noor Muhammad Shaikh, PC Shahnawaz Jalbani, PC Abdul Kareem Pitafi, PC Mujahid Ali Samo, PC Muhammad Bachal Hyderai, PC Muhammad Aslam Bhutto, PC Niaz Ahmed Gadani and P.C. Ghulam Murtza Bhutto, during patrolling received spy information that abductee in Crime No.1102/2022, u/s 365 PPC, registered at Police Station Allahabad, District Kasoor Punjab, namely Muhammad Tariq Rajput was being shifted to some other place by 14/15 armed culprits and would cross from Motopaho Choghati. The police party reached the pointed place, hid the vehicle in some bushes and took shelter under the trees. It was about 1200 hours when the police party saw 15 accused persons, who were

identified as Umar, Ibrahim, Sahto, Gaji Khan @ Wado Khan, Younis @ Muhammad Younis, Badihal, Loolan @ Fouji, Rajo and Afzal (the applicant herein) all r/o Kacho area and six unidentified persons duly armed with K.K.s taking along one person whose hands were tied. The police party challenged them to surrender, on which they opened straight fire upon them with the intention to commit their murder; the police retaliated the firing, and the encounter continued for about 40 minutes, during which all the assailants made their escape good, leaving the abductee in a ditch. On enquiry, the abductee disclosed his name as Muhammad Tariq s/o Zafar Iqbal by caste Mevo Rajput, r/o Bongla Kandyar Singh wala, taluka and District Ksoor Punjab. He further disclosed that on 11.12.2022, he came to Sadiqabad for treatment for a kidney stone; meanwhile, one white car, about four persons, boarded and kidnapped him on the force of weapons. He also gave the names of the culprits as Umar, Ibrahim Sahto, Gaji Khan, Younis, Badeehal, Loolan, Rajo, and Afzal, who demanded money from his elders for his release. Due to the non-availability of private persons, HC Noor Muhammad and PC Shahnawaz Jalbani were nominated as mashirs, and such a memo of recovery was prepared on the spot, hence this FIR.

3. At the very outset, it has been argued by the learned counsel for the applicant that the applicant is innocent and has been falsely implicated in this case by the police as before this case, an application u/s 22-A, & 22-B, Cr. P.C. was filed against the police; argued that story in the crime report is highly doubtful as the alleged encounter continued for 40 minutes in which almost 1400 bullets were fired, however, none from either side sustained a single firearm injury nor any vehicle of the police has been damaged; contends that there are contradictions in the statement u/s 161 Cr. P.C. of the abductee and in the evidence recorded before the trial court, which makes the case against the applicant one of further enquiry. He further argued that in another case registered as Crime No.1102/2022, u/s 365 PPS at Police Station Allahabad, the applicant has been acquitted. He has been behind bars since the date of his arrest and is no more required for further investigation, and as such, no useful purpose would be served by his further detention in jail. In support of his contentions, he relied upon the case of **Fahad Hussain and another v. The State (2023 SCMR 364)** and **Qurban Ali v. The State (2017 SCMR 279)**.

4. Conversely learned Assistant Prosecutor General appearing for the StateState vehemently opposed the bail application because the applicant is a habitual offender and remained involved in other criminal cases; argued that the name of the applicant finds a place in the FIR, the abductee also

nominates him in his 161 Cr. P.C. statement; argued that there is no malafide or ill will of the police or the abductee to involve the applicant falsely in this case and no case has been made out by the applicant for further enquiry as laid down u/s 497(2) Cr. P.C., therefore, the applicant is not entitled for a grant of bail.

5. I have heard learned counsel for the applicant, learned APG for the State, and carefully examined the material on record.

6. Perusal of the record and investigation report shows that the applicant is one of the accused involved in the abduction of Muhammad Tariq. The applicant's name transpires in the FIR, and the record reveals that before this, he was also involved in another kidnapping case for ransom, which reflects that applicant is a habitual offender. It is also evident that the abductee Muhammad Tariq in his 161Cr. P.C.'s statement, recorded soon after his recovery, has narrated a complete story, the matter of his abduction, the demand of ransom and rescue by police. The abductee had identified the applicant specifically by name for his abduction, which suggests that the applicant has a hand in the alleged offence; hence prima facie, there are reasonable grounds for believing that the applicant is connected with the offence charged with the alleged offence; therefore, no case for grant of bail is made out at this stage.

7. The contention of learned defence counsel that prior to this case, an application u/s 22-A and 22-B Cr. P.C. was filed against the police does not carry any force as it has been observed that people involved in such activity files such applications either to cow down the police or create a defence. So far, the contention of learned defence counsel that despite of alleged firing, none from either side has sustained firearm injury is concerned; no doubt in the alleged firing, nobody from either side sustained any injury, but that could not be a sole determining factor as it was not sine qua non for the offence u/s 324 PPC. As to the contention that the applicant has falsely been involved in this case by the police is concerned, it is suffice to say that no ill will or animosity with the police or abductee for his false implication, in this case, has been shown, therefore, the mere assertion that the applicant has falsely been implicated without corroboration of independent piece of evidence has no force. So far, the contention of learned defence counsel that the applicant has been acquitted in the case bearing Crime No.1102/2022, u/s 365 PPC registered at Police Station Allahabad District Kasoor Punjab is concerned, learned counsel has not produced any document in this respect. Moreover, the record shows that the trial of this case is in progress in which the charge has

been framed, and evidence of the abductee has been recorded wherein he has fully supported the prosecution case. It is a settled principle of law that only a tentative assessment is to be made while deciding a bail application. In the case of **Rehmatullah v. The State and another (2011 SCMR 1332)**, the Apex court has observed that once progress in the trial has been made, neither the bail can be granted nor the same can be rejected.

8. In view of the above, I consider that the applicant has failed to make out a prima facie case for a grant of post-arrest bail on merits. Accordingly, the bail application is dismissed; however, the trial court is hereby directed to conclude the trial within three months after receipt of this order under intimation to this Court through the Additional Registrar of this Court.

9. Needless to add, the observations made herein above are tentative only to decide this bail application which shall not in any manner influence the trial court when deciding the case.

JUDGE

Suleman Khan/PA