

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.778 of 2023

Applicant : i. Haji Ibad Ullah Mustafa
ii. Haji Afghan Khan
Through Mr. Muhammad Nooruddin,
Advocate

Complainant : Shakir S/o Zikriya
Through Mr. Abdul Nasir, Advocate

Respondent : The State
Through Mr. Abrar Ali Khichi,
Addl. Prosecutor General, Sindh

Date of hearing : 24.08.2023

Date of order : 24.08.2023

ORDER

AMJAD ALI SAHITO, J – Through this bail application, applicants seek pre-arrest bail in FIR No.104/2023 U/s. 324, 34 PPC at PS Sohrab Goth, after their bail has been declined by the learned Additional Sessions Judge-I, Malir, Karachi vide order dated 25.03.2023.

2. The details and particulars of the FIR are already available in the memo of bail application and FIR, which can be gathered from the copy of FIR attached with the application, hence, needs not to reproduce the same hereunder.

3. Per learned counsel for the applicants, the applicants are innocent and have falsely been implicated in this case; that the FIR is delayed of more than three days, for which no plausible reason has been given by the complainant; that the applicants were not even available at the place of incident but were busy in arrangement of wedding ceremony of their nephew; that the complainant was not eye witness of the incident but narrated the details of the incident in a way that he was present there; that the allegation is general in nature and no specific role has been attributed against each applicant. He lastly prays for confirmation of bail.

4. On the other hand, learned counsel for the complainant submits that the name of the applicants transpire in the FIR with specific role that they have given knife blow to Toofan, resultantly, he got serious injury and his condition is still critical, as such, he opposes for confirmation of bail. Whereas, learned Addl. P.G. read over the statement of injured witness wherein he has stated that accused Ibad was arm with knife but he has not caused knife blow to him; however, accused Haji Afghan snatched the knife from accused Ibad and then he gives knife blow to Toofan/him, as such, he is not entitled for bail.

5. Heard and perused. Admittedly, the name of the applicants transpires in the FIR with specific role that on the way, there was an accident between injured Toofan and the accused party, as such, to settle the dispute, accused Ibad though duly arm with knife tried to separate them. However, in the meantime, accused Afghan snatched the said knife and caused blow to injured Toofan, resultantly, he has received serious injuries and now is admitted in Agha Khan Hospital. Hence, specific role against accused Afghan is assigned whereas role assigned against accused Ibad shows his mere presence at the place of incident. In the case of **Qurban Ali vs. The State (2017 SCMR 279)**, the Hon'ble Supreme Court of Pakistan has granted bail to the accused who had not been attributed any role except the role of raising larkara. In such circumstances, trial Court had to determine, after recording pro and contra evidence, whether the accused was vicariously liable for the acts of his co-accused. The case against the accused was one of further enquiry. In another case reported in **1996 SCMR 1125 (Mumtaz Hussain and 5 others vs. The State)**, the Hon'ble Supreme Court has granted bail to the accused despite allegedly armed with deadly weapons only caused simple injuries to some of the prosecution witnesses. The role against accused Ibad Ullah will be decided at the time of trial when evidence will be recorded. Learned counsel pleaded malafide on the part of complainant that he implicated accused Ibad. At bail stage, only a tentative assessment is to be made and deeper appreciation of the record is not permissible.

6. In view of the above stated position, learned counsel for the applicant has made out a case for grant of bail against accused Haji Ibad Ullah Mustafa in terms of subsection 2 of Section 497 Cr.P.C. Resultantly, the instant bail application is allowed to the

extent of accused Haji Ibad Ullah Mustafa. The pre-arrest bail granted to the applicant/accused Haji Ibad Ullah Mustafa vide order dated 07.04.2023 is hereby confirmed on the same terms and conditions. Whereas, the bail plea of accused Haji Afghan Khan is dismissed and the order dated 07.04.2023 to the extent of accused Haji Afghan Khan is recalled.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants on merits.

JUDGE

Kamran/PA