

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1469 of 2023

Applicant : i. Adnan Younus S/o Younus Maseh
ii. Richard S/o Eleven
Through Mr. Abdul Nabi Joyo,
Advocate a/w Miss Firdous Sharif,
ADvocate

Complainant : Arisen S/o Yousuf Maseh
Mr. Arif Ali, Advocate holding brief for
Mr. Mohabbat Ali Ujjan, Advocate

Respondent : The State
Through Mr. Talib Ali Memon, Asstt.
Prosecutor General, Sindh

Date of hearing : 10.08.2023

Date of order : 10.08.2023

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicants/accused seek post-arrest bail in Crime No.224/2023 registered under Sections 324/109/34 PPC at PS Korangi, after his bail plea has been declined by the Additional Sessions Judge-XIIth, Karachi East vide order dated 27.06.2023.

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

3. Learned counsel for the applicant/accused submits that the applicants are innocent and have falsely been implicated in this case due to property dispute; that no specific role has been assigned against the applicants; that during course of investigation, the complainant has shown GPO Chowck Korangi 2½ as place of incident, whereas, in the FIR, the place of incident is Baakry Pump; that durng course of invidestigation, the I.O. collected the CDR of the complainant

as well as the applicants/accused which confirms that both the applicants were not present at the place of incident at the relevant time even the injured did not call the complainant from his cell number; that the applicants are in jail and are no more required for further investigation. Lastly he prays for grant of post-arrest bail to the applicants / accused. In support of his contentions, he has relied upon the cases reported as 2023 SCMR 1140 (Salman Zahid vs. The State), 2023 YLR 1143 (Asif Ali vs. The State and another), 2022 SCMR 1424 (Javed Iqbal vs. The State) and 2023 SCMR 857 (Gul Muhammad vs. The State).

4. The instant bail application was presented on 08.07.2023 and subsequently fixed on 10.07.2023 for hearing when notices were issued to the complainant. However, on 09.08.2023 one Mr. Mohabbat Ali Ujjan, Advocate has shown his appearance and filed Vakalatnama for the complainant and requested for adjournment. On his request, matter was adjourned and fixed for today i.e. 10.08.2023 at 08:30 a.m. but today he is called absent. It is about 09:10 a.m. However, his partner informs that he is busy before another Bench. Complainant and injured are present and they have been directed to argue the matter. Injured submit that on the instigation of present applicants, the unknown person has fired upon him, as such, he received injury in his chest. Complainant also states that after registration of the FIR, the applicants are issuing threats to him to withdraw from the cases, as such, they are not entitled for concession of bail. Learned APG also supports the version of the complainant party and states that the name of the applicants/accused transpires in the FIR with specific role that on the instigation of the applicants, the unknown person has injured Simon, as such, they are not entitled for bail.

5. I have heard the learned counsel for the parties and perused the material available on record.

6. The case of the prosecution is that the injured was on his way when he received the bullet injury from unknown

person; however, at the time of incident, Adnan and Richard were present as such their names have been nominated in the FIR but no specific role has been attributed against them as to whom instigation, the unknown person has fired at him. 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 no been attributed any role except the role of rasing larkara. In such circumstnsd 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 injuris to some of the prosecution witnesses.

7. In the instant case, learend counsel for the applicants claims that due to previous enmity they have been booked in this case, otherwise no role has been assigned against them. Further, during course of the investigation, the I.O. collected the CDR of the injured as well as complainant and accused persons and found that the applicants were not present and injured has not called from his phone to the complainant. It appears that the applicants are in jail and are no more required for further investigation and their detention in the jail will not improve the case of the prosecution. Reliance is place in an unreported case of the Hon'ble Supreme Court of Pakistan in the case of **Jahzeb Khan vs. The State through A.G. KPK and others** in Criminal Petition No.594/2020; wherein the Hon'ble Supreme Court has held that:

“4..... Petitioner’s continuous detention is not likely to improve upon investigative process, already concluded, thus, he cannot be held behind the bars as a strategy for punishment. A case for petitioner’s release on bail stands made out.”

8. In view of the above, learned counsel for the applicants has made out a case for grant of post-arrest bail. Accordingly, the instant bail application is allowed. Applicants/accused named above are granted post-arrest bail subject to their furnishing solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand only) **each** and PR bond in the like amount to the satisfaction of the learned trial Court.

9. 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/accused on merits.

JUDGE

Kamran/PA