

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

**Cr. Bail Appln: No.S-658 of 2023**

Applicant : Shoukat @ Mishan through Mr. Sardar Akbar F. Ujjabn advocate.

Complainant : Ali Hassan s/o Abdul Latif through Mr. Farhat Dawaich advocate.

Respondent : The State through Mr. Imran Ahmed Abbasi, Asstt. Prosecutor General.

Date of hearing: 08-09-2023

Date of Decision: 08-09-2023

**ORDER**

**ZULFIQAR ALI SANGI, J:-** Through the captioned bail application, applicant Shoukat @ Mishan s/o Qurban @ Yaseen Maitlo, seeks his post arrest bail in FIR being Crime No. 01/2023, registered at Police Station, Saeedpur, District Dadu for the offences under Sections 302, 147, 148, 114 and 504, PPC. Earlier his bail application was declined by the learned I-Additional Sessions Judge/MCTC, Dadu vide order dated 30.05.2023.

2. Per narration of F.I.R, some days back, there was quarrel took place between the accused and the complainant party over selling of fertilizer of their zamindar from the Landhi and accused party were annoyed and had exchanged harsh words with Gul Muhammad, who was being Chowkidar of the said Landhi. On 19.01.2023 complainant and his nephew Gul Muhammad Maitlo were sitting in the 'Landhi' and his brother Ghulam Qadir and Abdul Hameed brought their meals there. At about 07.00 pm accused Shoukat @ Mishan having pistol in his hand along with co-accused came there on their motorcycle and abused his nephew Gul Muhammad. Accused Qurban @ Yaseen instigated other accused to kill Gul Muhammad. On such instigation, all accused caught hold him and forcibly dragged him to the room of Morcha and then complainant party reached at the door and saw that

accused Shoukat @ Mishan made straight fired from his pistol at Gul Muhammad, which hit him on his chest near left nipple. He raised cry and fell down, thereafter all the accused persons went away on their motorcycle while abusing the complainant party. They saw his nephew in serious condition, they arranged vehicle and brought the injured to Civil Hospital, Dadu for treatment, but when they reached near Phatak on link road Dadu, his new Gul Muhammad succumbed to the injuries. They brought the dead body at Hospital and police arrived there, who completed the legal formalities. After post mortem was conducted, police handed over them dead body for burial purpose. After that complainant lodged the F.I.R as stated above.

3. Learned counsel for the applicant submits that applicant being innocent and has been falsely involved in this case by the complainant; that there is delay of four days in registration of F.I.R, which has not been explained by the complainant, as such, same is fatal to the prosecution case because evidently it has been lodged after deliberation and consultations to implicate the innocent persons as accused in an unseen incident; that complainant party claimed to have identified the accused on torch light, which is weak type of evidence, even the manner of identification in the room and firing at the deceased is doubtful; that recovery is foisted upon the accused and according to mashirnama of arrest and recovery, the accused were arrested on 24.01.2023, whereas per challan, the accused are said to have been arrested on 25.01.2023 and it is mentioned in bail order dated 23.01.2023, the brother of applicant/accused had filed application under section 491, Cr.P.C. for illegal detention of the present applicant /accused by police, which shows malafide and ulterior motives of the police and manner of dishonest investigation and all PWs are related inter-se, interested and inimical to the accused. Lastly, he prayed for grant of post arrest bail to the applicant/accused. In support of his contentions, he relied upon 2023 SCMR 857, 2022 SCMR 663, 2021 SCMR 130, 2020 P.Cr.L.J Note-89 (Sindh) and 2023 MLD 1072(Sindh).

4. Learned counsel for the complainant has contended that the applicant is charged with specific role in the F.I.R for causing fire

arm injury to the deceased Gul Muhammad, which hit him on his chest near left nipple; that all the witnesses supported the version of the complainant; that medical evidence is in line with ocular evidence. He has prayed that bail application of the applicant may be dismissed.

5. Learned A.P.G. submits that there is no contradiction in ocular evidence and medical evidence and the medical evidence is supportive to the ocular account, therefore, he has also prayed for rejection of the bail application of the applicant/accused.

6. I have considered the submissions of learned counsel for the parties and have gone through the material available on the record with their able assistance.

7. Admittedly, name of the applicant/accused is mentioned in the F.I.R with specific role that he made straight fired from his pistol at the deceased Gul Muhammad, which hit him on his chest near left nipple and died as a result of said injury; version given by the complainant in the FIR was supported by the PWs in their 161 Cr.P.C statements; Ocular evidence is supported by the medical evidence; the delay in registration of F.I.R has been properly explained by the complainant in the F.I.R. **Furthermore, recovery of crime weapon viz. pistol was effected from the applicant/accused and empty recovered from the place of vardhat matched with positive FSL report.** In the similar facts and circumstances the Supreme Court has declined the bail in the case of **SHOUKAT ILAHI V. JAVED IQBAL AND OTHERS (2010 SCMR 966)**, wherein Honourable Supreme Court of Pakistan has observed as under:-

*“6. We have given due consideration to the submission made and have gone through the material available on record. From the record, we find that the name of the petitioner was mentioned in the FIR; that the motive had been alleged against him; that a specific role of raising Lalkara was assigned to him and that it was specifically mentioned that he and co-accused fired at the deceased, which hit him. The PWs have supported the case in their 161 Cr.P.C statements which is further corroborated by the medical evidence, as according to Medical Officer the deceased had six firearm injuries out of them two were exit wounds. Thus, prima facie incident has been committed by more than one person. From the material available on record, we are of the view that there are reasonable grounds for believing that the petitioner is involved in the case.”*

8. At bail stage, only tentative assessment is to be made. In these facts and circumstances of the case, I am of the considered view that there are sufficient material available on record to connect the present applicant with the commission of offence. Learned counsel for applicant has failed to make out a case for grant of post arrest bail to the applicant/accused. Resultantly, the criminal bail application stands dismissed. However, learned trial Court is directed to expedite the matter and conclude the trial within a period of six (06) months after receipt of this order and report compliance to this Court through Additional Registrar. The law cited by learned counsel for applicants is not helpful to the applicant/accused as the same is on different facts and circumstance from the present case and each case is to be decided on its own facts and the circumstances.

9. The observations made hereinabove are tentative in nature only for the purpose of deciding the instant bail application, which shall not, in any manner, influence the learned Trial Court at the time of final decision of the subject case.

JUDGE