

## IN THE HIGH COURT OF SINDH AT KARACHI

### Criminal Bail Application No.1775of 2023

Applicant : Syed Suleman Shah S/o Syed Ali  
Asghar through Mr. Amir Mansoob  
Qureshi, Advocate

Legal Heir of the : Samreen Fatima  
Deceased Through Mr. Muhammad Jibrán Nasir,  
Advocate a/w Barrister Rafique Ahmed

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

Date of hearing : 12.09.2023

Date of order : 19.09.2023

### **ORDER**

**AMJAD ALI SAHITO, J** --Through this Bail Application, the applicant/accused seeks post-arrest bail in Crime No.254/2020 registered under Sections 302, 380, 201, 34 PPC at PS Al-Falah, after his bail plea has been declined by the Additional District & Sessions Judge-I, Karachi East vide order dated 03.08.2023.

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

3. Learned counsel for the applicant submits that the applicant is innocent and has falsely been implicated in this case; that the applicant is a complainant of the instant Crime viz. Cr. No.254/2020 of PS Al-Falah wherein some unknown persons committed robbery in his house thereafter he has lodged the said FIR against some unknown accused persons; that during the robbery, some neighbours called '15' as such police mobile of PS Al-Falah reached there and thereafter

police party entered into the house and family members informed the police that the dacoits might be on the top floor of the house as such, PC Zulfiqar and other constables went on the roof top by using the staircase where they found one suspected person coming down from the roof top by using the same staircase, on seeing the suspected person, PC Zulfiqar fired at him from his pistol, resultantly the suspected person got injured; that during the occurrence, the complainant of Crime No.254/2020 Syed Suleman informed that the deceased is not a dacoit but in fact he is a friend of his son thereafter, he was shifted to hospital where he succumbed to the injuries; that during course of investigation, PC Zulfiqar was arrested and mashirnama of place of incident was prepared thereafter, statement of the witnesses was recorded and submitted its report before the concerned Magistrate, who disposed of the case in "A" class whereas in Crime No.255/2020 PC Zulfiqar was shown in custody and report under Section 173 Cr.P.C. was filed; that after receiving the report the learned Magistrate while passing the order taken the cognizance of the offence of Crime No.254 of 2020 relying upon the case of Sugra Bibi and disposed of Crime No.255/2020 in "C" class; that the learned trial Court has dismissed the bail application of the applicant only on the ground that there was friendly relationship between the deceased and the daughter of the applicant so also the place of incident was washed out by the applicant and he has twisted the story by narrating a story of theft from his house which was ultimately vanished; that on the basis of last investigation that he has failed to produce the empty shell fired by the PC Zulfiqar and concealed the mobile and on the basis of that evidence, the applicant was denied from his bail; that there is no direct or indirect evidence available on record to connect the applicant with the alleged offence and on the basis of same role, other accused have been granted bail; that on the basis of presumption and assumption the applicant is booked in this case, otherwise the sister of deceased and PC Zulfiqar admitted in their statements that due to misunderstanding he has fired upon the deceased when he

saw deceased coming from staircase; that four investigations have been conducted and only on the circumstantial evidence the applicant has been booked otherwise there is no evidence to connect him in the present offence. He lastly prays for a grant of bail. In support of his contentions, he has relied upon the following case laws:

- i. 2020 SCMR 1049 (*Noor Muhammad vs. The State & another*)
- ii. 2008 SCMR 173 (*Muhammad Daud and another vs. The State and another*)
- iii. 2022 SCMR 547 (*Gul Nawab vs. The State through A.G. Khyber Pakhtunkhwa and another*)
- iv. 2012 SCMR 1691 (*Muhammad Abid vs. The State and another*)
- v. 2020 SCMR 841 (*Muhammad Islam vs. The State through Advocate General Punjab, Lahore and others*)
- vi. PLD 2009 Supreme Court 58 (*Muhammad Shahzad Siddique vs. The State and another*)
- vii. 1995 SCMR 1249 (*Chaudhry Shujat Hussain vs. The State*)
- viii. 2020 SCMR 423 (*Hidayat Khan vs. The State and another*)

4. On the other hand, learned counsel appearing for the legal heir of the deceased vehemently opposes for grant of bail and read over the final police report (Challan) submitted by SIO Waseem Ahmed in the court of law. He submits that the SIO Inspector Waseem Ahmed of Police Station Boat Basin Clifton Karachi stated that in fact, the motive of the incident is the relationship between the daughter of the present applicant and the deceased Hussan; that the ocular evidence does not find support from the medical evidence as narrated by the applicant/complainant of Cr.No. 254/2020 and as per medical evidence the fire was made from a close range, as such, the applicant is very much involved in this case; that during the course of the investigation, the investigating officer (I.O.) of this case also collected the USB and some videos and pictures of the deceased. The I.O. of the case also demanded the mobile phone of the deceased which was in the hand of the applicant and his family and finally, after formatting the same, the mobile was handed over to the I.O. The I.O. also supported the investigation conducted by SI Faheem Uddin, SIP Muhammad Pervez and Inspector Muhammad Naeem; that the accused handed over his pistol after one month of the incident destroying the evidence of the place of the

incident; that the empty of 9 mm pistol was not handed over to the I.O.; that he has also given his opinion that PC Zulfiqar has fired upon the deceased presuming to be suspected whereas, the distance between him and deceased was only 3 feet but in fact the entire episode was made by the complainant Syed Suleman and his wife. He submits that sufficient material is available on record to connect the applicant in this case. In support of his contentions, he has relied upon the following cases:

- ix. *2010 SCMR 1735 (Asif Ayub vs. The State)*
- x. *2020 PCRLJ Note 111 Sindh (Adil vs. The State)*
- xi. *2022 MLD 1125 Karachi (Umair Yousuf vs. The State)*
- xii. *2017 PCRLJ Note 134 Lahore (Mirza Mahmood vs. The State)*
- xiii. *2021 PCRLJ 1232 Lahore (Hafiz Syed Muhammad Usman vs. The State and another)*
- xiv. *2018 PCRLJ N 133 Lahore (Umar Nasir vs. The State and another)*
- xv. *2023 SCMR 1068 (Bakhti Rahman vs. The State)*

5. Learned Addl. P.G. also supports contentions of learned counsel for the legal heirs of the deceased; however, admitted that police have not collected the evidence regarding the conversation between the deceased and the daughter of the applicant/complainant.

6. I have heard the learned counsel for the parties and also examined the police papers with the assistance of the learned APG.

7. The case of the prosecution is that the applicant lodged FIR bearing Crime No.254/2020 of PS Al-Falah wherein he disclosed that on the day of the incident, there had been a wedding of his son Danish and when they returned home at 2.15 a.m night the wife of the applicant Irum Sulaiman informed her husband/applicant that theft has occurred in the house. The complainant/applicant went upstairs by taking his licensed pistol and fired four rounds and after checking the rooftop none was found. Later on the friends of the son of the complainant namely Hassan Abbas, Mehmood, Danial, Araib, and Zeeshan, brother of Danial and Mohalla boys who were available in the street came there. Meanwhile,

mohalla people called '15' and all the persons went to the rooftop by using the staircase but none was present there. Thereafter 15 police also came on the spot and rushed towards the rooftop by using staircases and at the same time the friend of the complainant's son Hassan Abbas (deceased) was also coming down from the rooftop using the same staircase when all of sudden a policeman on causing suspicious of dacoit fired upon the deceased, who after receiving firearm fell down in injured condition. The police brought the injured from the staircase to shift him for treatment. The son of the complainant Syed Zeeshan informed the police the injured Hassan Abbass was their guest, not a dacoit.

8. On the other hand, another FIR being Crime No.255/2020 was lodged at PS Al-Falah wherein the complainant PI/SHO Saadat Butt narrated the above story and further added that the police mobile and 15 police reached at place of the incident viz house of the applicant/complainant, wherein the inmates of the house informed the police that the dacoits are available on the rooftop and they are causing fire shots. The place was surrounded and some of the policemen including P.C Zulfiqar went to upstairs and the meantime they saw the accused coming down from the staircase and considering him a dacoit PC Zulfiqar mistakenly fired from his government weapon which hit the deceased on his chest and he fell down. The household informed police that the injured was their guest. The injured was shifted to hospital for the treatment. The complainant went to the place of the incident and saw scattered articles in the cupboard and also recovered 4 empties from the place of incident for which the owner of the house Sulaiman informed the police that the empties belonged to him and were fired by him. The crime scene unit was called by the complainant. They collected fingerprints, blood-stained from the place of the incident for investigation. The father of the deceased namely Mubarak Shah and brother M. Abbas refused to lodge FIR, hence the FIR was lodged by

the complainant/SHO Saadat Butt on behalf of the State. The PC Zulfiqar was arrested on the spot and handed over to I.O. for investigation.

9. The investigation of both the cases was conducted by the ASI Fahem-Uddin of the investigation wing who submitted a police report under section 173 Cr.P.C (Challan) before the concerned Magistrate. The learned Magistrate passed the order and by taking the guideline from the case of Sugra Bibi case (PLD 2018 SC 595) cancelled FIR No. 255/2020 and took cognizance of FIR No.254/2020. It is important to note here that the learned Magistrate has taken cognizance of the offence in which the applicant is the complainant. During the investigation, Section 302 and 201 PPC were added in the police report.

10. Things do not end here the sister of the deceased namely Samreen moved her application to the SSP (Investigation-III) for a change of investigation. From perusal of the record and the last police report, it reflects that the first investigation was conducted by ASI Fahem-Uddin, then SIP Muhammad Perviz, Inspector Muhammad Naeem Awan and then SIO Inspector Nisar Ahmed Soomro, who has recorded further statements of the prosecution witnesses under section 162 Cr.P.C. Finally, the investigation was conducted by the Inspector Waseem Ahmed. In the last investigation, the I.O. opined that the applicant destroyed the evidence and produced his weapon viz pistol after one month. The empty which was fired by the PC Zulfiqar was not handed over to the I.O. Contradiction in the statement of the witnesses. He has produced the mobile phone of the deceased after formatting/deleting the DATA. Washout the place of incident. The distance between the deceased and PC Zulfiqar is not appealing to the prudent mind and finally the inmates of the house stage drama of theft. The above were the allegations against the applicant and on the basis of the above allegations the bail of the applicant was declined.

11. Before I part with the case I would like to observe that it has become a practice that the investigations are transferred from one officer to another by different orders of the superior officer i.e. D.I.G or I.G. It is not conducive to the administration of justice to do so. Investigation by a police officer, by itself, is not proof of the guilt or innocence of the accused. If a police officer submits a case to the Court against the accused his report is not legal evidence in the case, nor the court can rely on it. The proper course for the authorities/I.Os is to investigate the matter honestly and collect the evidence in all shapes and leave the matter to the Court to adjudicate upon it and to come to its own conclusion on the evidence which produced before it as to whether any offence is made out or not. By transferring of investigation from one officer to another, an opportunity is afforded to the parties to win over the witnesses which results in to a vicious circle of corruption, this practice should be avoided.

12. Reverting to the merit of the case, the motive set up by the prosecution in this case in the last investigation conducted by the SIO Inspector Waseem was that due to illicit terms with the daughter of the applicant the deceased Hassan Abbas was done into death. During the arguments when it was enquired from the learned counsel appearing on behalf of the legal heir of the deceased as well as the learned Addl. P.G. whether any CDR or mobile data has been collected by the I.Os to believe that there were taking terms of the deceased and the daughter of the applicant or any WhatsApp messages for which they replied in negative, as such, at this stage apparently the prosecution failed to prove the motive of the case.

13. From the face of both the FIRs it appears that due to misunderstanding PC Zulfiqar has fired upon the deceased. The allegations against the applicant are that he has hatched the conspiracy against the deceased and destroyed the evidence but tentatively no tangible evidence has been brought on record by the four I.Os of the case to connect the applicant with the alleged offence. They/I.Os failed to produce

evidence against the applicant to believe that he has concealed an empty of 9 mm pistol or abated and in a consequence thereof, the alleged incident has taken place. Four empties were handed over by the applicant to the investigating officer. However, no recovery has been effected from the applicant after he was taken into custody. Further, based on presumption or suspicious, no one cannot be detained in jail for an indefinite period. Four investigations have been completed and the applicant is no more required for further investigation. Reliance is placed in the case of **Gul Nawab v. The State and others (2022 SCMR 547)**, wherein the Hon'ble Supreme Court of Pakistan has granted bail to the applicant in similar circumstances.

*“Perusal of the contents of the crime report clearly reflect that the petitioner along with co-accused launched murderous assault on the complainant party while using firearms resulting into death of the nephew of the complainant. We have noted that only a general role of firing has been ascribed to the petitioner without any specification qua (i) kind of weapon, (ii) part of the body which has been hit, and (iii) any recovery of the empties from the place of occurrence specifying the accusation against the petitioner. We are conscious of the fact that four empties of 7.62 bore were taken into possession by the Investigating Officer. However, no recovery has been effected from the petitioner after he was taken into custody. Perusal of the crime report clearly reflects that the complainant has not mentioned any overt act towards the opposite party whereas it is clear stance of the petitioner that in -fact the complainant party had shown aggression and initiated the occurrence. In this regard, separate FIR bearing No. 733/2012 under sections 302/34, P.P.C. has been registered on the same day and time. There is no denial to this fact that the occurrence described in the other crime report was not outcome of the same occurrence, which clearly reflects that the complainant has concealed the real facts while lodging the crime report in which the petitioner is seeking the relief of bail. It is established principle of law that when there are two versions of the occurrence, it squarely invites the provisions of section 497(2), Cr.P.C. calling for further probe into the occurrence, which is apparent in this case.”*

14. The I.O. also recorded a statement under section 161 Cr.P.C. of Mst. Syeda Samreen sister of the deceased in crime No.254/2020 wherein she has disclosed that when the information was conveyed to the complainant about the



incident she was rushed to Jinnah Hospital where her brother was in injured condition. SP Shahnawaz, SSP Ali Raza and SHO Sadat were also present there and they informed her due to a misunderstanding accused Zulfiqar had fired upon the deceased and he is in their custody.

15. The learned trial court has granted bail to the main accused PC Zulfiqar against whom the specific role has been assigned that he has fired upon the deceased. Further, the learned trial court had also granted bail to the co-accused namely Saadat Ahmed the then SHO and Syed Kamran Ali. The role assigned against both the applicant was that they have destroyed the evidence and both accused were booked for an offence under section 201 P.P.C., and the case of the applicant is/was identical to the co-accused to whom the learned trial court had granted bail, hence the applicant is also entitled for grant of bail on the ground of rule of consistency. In the case of ***Qurban Ali vs. The State and others (2017 SCMR 279)***, the Hon'ble Supreme Court of Pakistan had granted bail to the accused who had not been attributed any overt act during the occurrence except the role of raising 'lalkara'. The trial Court in such circumstances 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 of ***Mumtaz Hussain and 5 others v. The State (1996 SCMR 1125)***, bail was granted to the accused on the ground that despite being allegedly armed with deadly weapons like rifle, guns and hatchet only caused simple blunt injuries to some of the prosecution witnesses using the wrong side of their weapons. The question of whether the accused in such a situation shared his common intention with the co-accused who had caused the death of the deceased needs further inquiry. At the bail stage, only a tentative assessment is to be made and deeper appreciation is not permissible. The applicant is in jail and he is no more required for further investigation.

16. In view of the above, learned counsel for the applicant has made out a case for a grant of post-arrest bail. Accordingly, the instant bail application is **allowed**. The applicant/accused named above is granted post-arrest bail subject to his furnishing solvent surety in the sum of Rs. 100,000/ (Rupees one lac only) and PR bond in the like amount to the satisfaction of the learned trial Court.

17. 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 applicant/accused on merits.

**JUDGE**

Kamran/PA