

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No.2116 of 2023

<i>Date</i>	<i>Order with signature of Judge</i>
Applicants:	Qazi Khan son of Sher Gul and Ayoub Khan son of Saleh Khan (present on bail), through Syed Amir Ali Shah Jeelani, Advocate
The State:	Through Mr. Shoaib Safdar Ghumman, Assistant Prosecutor General, Sindh
Complainant:	Wazeer Badhshah son of Haji Saeed Khan, through Mr. Naseer Ahmed Khan, Advocate
Date of hearing:	16.05.2024
Date of order:	16.05.2024

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicants Qazi Khan son of Sher Gul and Ayub Khan son of Saleh Khan seek their admission on pre-arrest bail in Crime No.834/2021 of Police Station Shah Latif Town, Karachi, under Section 147/148/149/302/324/337-A(i) PPC. The applicants preferred their anticipatory bail before the Court of Sessions wherefrom it was assigned to Ist Addl. Sessions Judge/MCTC, Malir Karachi vide Criminal Bail Applications No.2069 & 2302 of 2021, who after hearing the parties, has turned down their request through order dated 29.06.2021.

2. Since the case was already challaned and tried by the 1st Addl. Sessions Judge/MCTC, Malir Karachi vide Sessions Case No.2181/2021 (re-the State Versus Ali Khan and another). In first round of litigation, the trial Court framed charge against co-accused Ali Khan and Muqadar Khan on 25.10.2021 vide Exh.2; however, after conclusion of the trial, both the accused were found innocent and therefore, were acquitted of the charge by way of judgment dated 14.11.2022. The present applicants were shown absconders; however, after acquittal of the co-accused they appeared before the trial Court through Criminal Bail Application No.2069 / 2021 & 2302 / 2022, which by means of order dated 29.06.2021 were declined; hence, instant bail application has been maintained.

3. Since the facts of the prosecution case are already mentioned in the impugned order as well as FIR, which are annexed with the Court file, therefore, there is no need to reproduce the same.

4. Learned counsel for the applicants submits that role attributed to the applicants is similar as that of co-accused, who have already been acquitted and mere allegation against them is of absconson; however, since they have appeared voluntarily before the trial Court as well as before this Court, therefore, they cannot be termed as absconders; hence, submits that if they will be taken into custody, tomorrow again they will be bailed out on the ground of parity; hence, prays for confirmation of bail.

5. Learned Addl. P.G, Sindh appearing for the State, opposes the bail application on the ground that applicants have remained absent; however, he could not controvert the fact that co-accused on similar role, have already been acquitted from the charges by way of judgment and role attributed to the applicants is similar as of co-accused who have already been acquitted.

6. Learned counsel for the complainant also opposes the bail application on the ground that applicants were granted bail by this Court and later they jumped over the same; however, after acquittal of the co-accused, they have again filed this bail application; hence, they are not entitled for the relief sought for. He; however, could not controvert the fact that the role against them is identical one as that of co-accused, who have already been acquitted of the charge.

7. **Heard arguments and perused record.** No doubt, the applicants are nominated in the FIR and there are five injured in the case. One of them had lost his life; however, the allegations against all the accused including present applicants are general in nature and no one has been attributed any specific role. Since, some of the co-accused were tried and acquitted of the charges by way of judgment dated 14.11.2022 and some of co-accused having similar role have been granted pre-arrest bail. As such, case of present applicants is on identical footings than that of co-accused who either have been acquitted or have been granted extraordinary relief in shape of pre-arrest bail, therefore, propriety of law demands that applicants should be extended constant treatment. It is settled principle of law that mere absconson does not intercept the way of bail to an accused, if otherwise he/they succeed to make out a good prima facie case for bail either on merits or on law of parity. In instant case, some of co-accused have been acquitted and some have been enlarged on pre-arrest bail by this Court and the case of present applicants is at par with them; hence, requirement of the law is that applicants should be extended constant treatment. Reference can be had from the case of *BALOO alias PIYAR ALI Versus THE STATE (2000 P.Cr.L.J 1508)*. Since, the applicants have surrendered voluntarily before the Court, thereby have put themselves completely upon the mercy of the Court. As such, their intention was to face the trial and had no wrong intention to abscond away; hence, they cannot

be termed as absconders. Reliance can be placed upon the case of *MITHO PITAFI Versus THE STATE (2009 SCMR 299)*.

8. Though learned Assistant P.G, Sindh as well as counsel for the complainant are very much aware that some of co-accused have already been acquitted and some have been enlarged on bail; however, prosecution or the complainant had not filed any appeal against those who have been acquitted nor filed any cancellation against accused who have been granted pre-arrest bail by this Court. Nothing has been brought on record that the applicants after grant of ad-interim pre-arrest bail, have misused the concession extended to them. Even then they oppose the bail application without assigning valid reason. In such a situation, if the applicants will be taken into custody today, tomorrow again they will be bailed out on the ground of consistency, therefore, objection so raised by learned Assistant P.G, Sindh as well as counsel for the complainant is not much of consequence in view of dictum laid down by the Hon'ble Supreme Court of Pakistan in case of *MUHAMMAD RAMZAN Versus ZAFAR ULLAH and another (1986 SCMR 1380)*.

9. In the circumstances and in view of the discussion whatsoever has been made hereinabove, I am of the considered view that applicants have successfully made out a good prima facie case of further inquiry within meaning of subsection 2 to section 497 Cr.P.C. Consequently, instant bail application is hereby allowed; interim bail granted earlier to applicants Qazi Khan son of Sher Gul and Ayub Khan son of Saleh Khan on 22.09.2023 is hereby confirmed on same terms and conditions.

10. Applicants present before the Court are directed to continue their appearance before the trial Court without negligence and in case they may misuse the concession or may temper with the prosecution's evidence then the trial Court would be competent to take legal action against them as well to their surety in terms of Section 514 Cr.PC. Trial Court is also hereby directed to make necessary arrangements for securing attendance of the prosecution witnesses and conclude the trial within shortest possible time under intimation to this Court through MIT-II.

11. Let copy of this Order be communicated to trial Court through learned Sessions Judge, concerned. Learned MIT-II to ensure compliance.

JUDGE