

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Bail Application No.S-586 of 2024

DATE ORDER WITH SIGNATURE OF JUDGE

03.09.2024

Mian Taj Muhammad Keerio, advocate for applicants.
Mr. Badal Gahoti advocate for complainant.
Ms. Rameshan Oad, A.P.G.

ZULFIQAR ALI SANGI, J.- Applicants Aijaz Ali and Manzoor Ali seek post-arrest bail in Crime No.04/2023 registered at P.S. Bhanote District Matiari U/s 302, 147, 148, 149 PPC after their bail was declined by the learned Additional Sessions Judge/MCTC, Matiari vide order dated 15.05.2024.

2. The allegations against the applicants as per FIR are that applicant Aijaz with co-accused had fired upon the deceased whereas applicant Manzoor Ali along with co-accused caused hatchet blows to the deceased Allah Rakhio.

3. The bail has been sought on the ground that there is delay of 38 hours in registration of FIR whereas distance between police station and place of incident is about 3/4 kilometers; that the enmity is admitted in FIR and approach of complainant towards the hospital in the morning time is doubtful; that further statement of complainant was recorded on 29.05.2023 wherein he exonerated co-accused Riaz and has introduced accused Ghulam Abbas in his case; that accused Ghulam Abbas and Muhammad Yakoob whose bail was earlier rejected by the trial court had approached this Court where in Criminal Bail Application No.S-1053 and 1251 of 2023 vide order dated 18.01.2024, co-accused Ghulam Abbas has been granted bail by this Court whereas bail of Muhammad Yakoob was declined who thereafter approached the Honourable Supreme Court where Honourable Supreme Court vide order dated 01.03.2024 has granted bail on the rule of consistency as co-accused Allah Dad has been granted post-arrest bail by the trial court; that the fire of applicant Aijaz was not hit to the deceased Allah Rakhio; that the applicants are behind the bars for about 15 months without any progress in the trial; that the case of applicants require further inquiry therefore the applicants are entitled to be enlarged on bail.

4. The bail has been opposed by the counsel for complainant and APG on the ground that the delay in FIR has been explained by the complainant; that he after receiving injuries by the deceased approached the police station and got letter for conducting postmortem and on the same day postmortem was conducted and thereafter FIR was registered; that applicant Aijaz is nominated in FIR with specific

role that he fired upon deceased which hit and the recovery of said pistol was effected coupled with the positive FSL report of empties recovered from the place of incident; that applicant Manzoor Ali is also nominated in FIR and as per statement of PW Amanullah he has caused direct hatchet blow on the head of deceased and that is supported by medical evidence; that due to tactics used by the accused persons the case has not been proceeded; that the applicant Manzoor Ali was absconder and was arrested by another police station where recovery of arms was effected, which was rebutted by counsel for the applicants that in that case of arms applicant Manzoor Ali has been acquitted vide judgment dated 27.08.2024. They have relied upon the cases of **MUHAMMAD ATIF vs. The STATE and another (2024 SCMR 1071)** and **SHOUKAT ILLAHI vs. JAVED IQBAL and another (2010 SCMR 966)**.

5. Heard learned counsel for the applicants, complainant and APG and perused the material available on record.

6. From tentative perusal of material available on record, it reflects that the complainant immediately approached the police station wherefrom he obtained letter for postmortem which was conducted by the Doctor on the same day, therefore, the delay is not on the part of complainant. As per FIR, the role against the applicants is direct in nature; that he along with co-accused who is still absconder fired from pistol which resulted death of deceased Allah Rakhio. The allegation made in FIR are supported by the PWs in their statements u/s 161 Cr.P.C. coupled with support of medical evidence. As per report called from the trial court, the accused are responsible for delaying the trial. The recovery from applicant Aijaz coupled with the positive FSL report with empties recovered from the place of incident connects him with the commission of offence. The accused, who have been granted bail, are charged with different role from the role of present applicants, therefore, rule of consistency in the present case is not applied.

7. Under such circumstances, no case for grant of bail is made out. Result thereof this criminal bail application is dismissed.

8. 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.

J U D G E