

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Criminal Bail Application No.S-1053 of 2023

Criminal Bail Application No.S-1251 of 2023

Applicant(s) : Through Mr. Mian Taj Muhammad Keerio, Advocate.

Complainant : Through Mr. Badal Gahoti, Advocate.

State : The State through Ms. Rameshan Oad, Asst. P.G Sindh
a/w SIP Nisar Khaskheli of PS Bhanoth District Matiari.

Date of hearing : **18.01.2024**

Date of Order : **18.01.2024**

O R D E R

AMJAD ALI SAHITO, J:- Since both above captioned bail applications are arising out of one and same crime, as such, are being disposed of by this single order.

2/- The applicant(s)/accused in both these bail applications seek their admission on post-arrest bail in Crime No.04 of 2023, under section 302, 147, 148, 149 PPC, registered at P.S Bhanoth District Matiari, after his bail plea was declined by the learned Additional Sessions Judge, Matiari, vide order dated 16.09.2023.

3/- The details and particulars of the F.I.R. are already available in the bail application and F.I.R., same could be gathered from the copy of F.I.R. attached with such application, hence needs not to reproduce the same hereunder.

4/- Learned counsel for the applicant(s)/accused mainly contended that the applicant(s)/accused are innocent and they have been falsely implicated in this case; that the name of applicant Ghulam Abbas does not transpire in the F.I.R so also no specific role has been assigned to him; that as per F.I.R, the incident has taken place on 27.05.2023 whereas the F.I.R was registered on 28.05.2023 with a delay of about one and half day for which no plausible explanation has been furnished by the complainant party; that further statement under Section 162 Cr.P.C of the complainant was recorded on 29.05.2023 in which he implicated the applicant Ghulam Abbas. He next submits that role assigned to the applicant Muhammad Yaqoob @ Iqbal is that he was only plying the

motorcycle otherwise he has not participated in the commission of offence; that co-accused namely Riaz @ Karo and Allah Dad have been granted bail by the trial Court who have identical role as of present applicant(s)/accused as such rule of consistence is also applicable in this case. Learned counsel has placed reliance on the cases of **Mst. Asiya v. The State and another** [2023 SCMR 383], **Saad Zia v. The State and others** [2023 SCMR 1898], **Noor Komal and another v. The State and another** [2023 SCMR 999], **Ashraf and another v. The State** [2018 MLD 1685] and, **Gul v. The State** [2018 YLR Note 226]. He lastly prayed for grant of bail to the applicant(s)/accused.

5/- On the other hand, learned Assistant Prosecutor General, Sindh assisted by learned counsel for the complainant vehemently opposed to the grant of bail to the applicant(s)/accused, by contending that specific role has been assigned to the applicant Ghulam Abbas by the witness namely Amanullah for causing hatchet below on the neck of deceased Allah Rakhio. Whereas, applicant Muhammad Yaqoob @ Iqbal has also been assigned specific role for facilitating the main accused persons who have fired upon the deceased Allah Rakhio. Lastly prayed for dismissal of bail.

6/- I have heard learned counsel for the parties and have perused the record available.

7/- Admittedly the name of applicant Ghulam Abbas does not transpire in the F.I.R whereas no specific role has been assigned to him and the complainant while recording further statement under Section 162 Cr.P.C had submitted that he has not in conscious as such has not implicated the applicant Ghulam Abbas in the F.I.R. However, it is yet to be determined as to whether the applicant Ghulam Abbas has participated in the commission of offence unless the evidence is to be recorded. In these circumstances, the case of the applicant Ghulam Abbas falls within the ambit of sub-section (2) of section 497 Cr.P.C. Learned counsel for the applicant(s) has pleaded malafide on the part of the complainant for false implication of the applicant Ghulam Abbas in this case which cannot be ruled out. In these circumstances, learned counsel for the applicant(s) has made out a case for grant of post-arrest bail in favour of applicant Ghulam Abbas. Resultantly, Cr. Bail Application No.S-1053 of 2023 is **allowed** and the applicant Ghulam Abbas is admitted to bail subject to his furnishing solvent surety in the sum of Rs.1,00,000/- [Rupees One Hundred Thousand] and P.R. bond in the like amount to the satisfaction of learned Trial Court.

8/- While referring to the case of applicant Muhammad Yaqoob @ Iqbal, he has been assigned main role of plying the motorcycle and brought the main accused person Mashooque and Aijaz at place of incident who made straight fire upon deceased Allah Rakhio. Resultantly, the deceased received two fire arm injures on different parts of the body which are supported by medical evidence. The prosecution witnesses have fully supported the version of the complainant in their statement recorded under Section 161 Cr.P.C. Furthermore, no ill-will or malafide is alleged against the complainant party by the applicant Muhammad Yaqoob @ Iqbal even otherwise he has shown in F.I.R with specific role. In these circumstances, there is sufficient material available on record to connect the applicant Muhammad Yaqoob @ Iqbal in the commission of offence and so also he has also failed to make out a good case for grant of bail in view of sub-section (2) of Section 497 Cr.P.C. Consequently, Cr. Bail Application No.S-1251 of 2023 is **dismissed**.

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 applicant(s) on merits.

JUDGE

Hafiz Fahad