

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No.D-319 of 2023
(*Muhammad Ismail & another Vs. The State*)

Date	Order with signature of Judge
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1. *For Orders on office objection.*
2. *For hearing of bail application*

Mr. Achar Khan Gabole advocate for the applicants.
Mr. Shahid Ali Phulpoto, advocate for the complainant.
Syed Sardar Ali Shah Rizvi, Additional P.G for State

Date of hearing	09-10-2023.
Date of Order.	09-10-2023.

KHADIM HUSSAIN SOOMRO, J. The instant application has been filed on behalf of applicants/accused for their release on bail U/S 497 Cr. P.C in Crime No. 118/2022 for offence U/S 302, 324, 148, 149, 427, 337A(i), 337F(iii) PPC registered at Police Station, B-Section Khairpur. Prior to this, such application was moved before the trial Court, but the same was rejected by learned IInd Additional Sessions Judge, Khairpur vide order dated 04-05-2023, hence this bail application.

2. According to the prosecution story, the complainant Mst. Hafeezan lodged the FIR on 24-05-2022 at 2200 hours, alleging therein that her brother-in-law lodged FIR bearing Crime No. 113/2022 U/S 506/2, 114, 33H(ii) at P.S B-Section, Khairpur

against accused Ajeeb Phulpoto and others; hence they were annoyed and were issuing threats to withdraw from the case; otherwise, they would be murdered. On 24-05-2022 at the morning time, the complainant, along with her husband Abdul Hafeez, brothers-in-law Naimatullah and Nadir Ali and her minor child Muhammad Peral and son Naeem Ahmed had gone to village Khedo for visiting to some of their relatives and they were returning home. She/complainant, along with her husband and brother-in-law Naimatullah were on one motorbike while Nadir Ali aged about 27/28 years and her sons Muhammad Peral aged about 04 years and Naeem aged about 16/17 years were on another motorcycle. When they crossed the National highway bypass road Pir Mangio and reached at Bhano village link road, it was about 1030 hours, and reached at Banana garden of Memon community, that suddenly 10 persons armed with weapons emerged in front of them, who were identified to be accused Ajeeb, Rano both sons of Allah Warayo Phulpoto, Wazir both sons of Abdul Kareem Phulpoto, Nazir, Abdullah alias Jogi both sons of Allah Rakhyo armed with Kalashnikovs, Ali Asghar son of Shah Mardan alias Sheedo Phulpoto, Muhammad Ismail son of Muhammad Ishaque Phulpoto armed with pistols, all residents of Bhano village, Taluka Khairpur and two unidentified accused who

were armed with repeaters, were clearly seen and would be identified, if seen again. All the accused gave signal to Nadir to stop the motorcycle, whereupon Nadir stopped the same due to fear of weapons; the husband of complainant also stopped his motorcycle. Accused Ajeeb asked Nadir Ali that he has not withdrawn the case yet; therefore, he would not be spared and would be murdered; by saying so, accused Ajeeb opened fire of Kalashnikov upon my brother-in-law Nadir with an intention to commit his murder, which hit him on his face, nose and at right shoulder of the arm. Accused Rano made fire from his Kalashnikov upon the minor son namely Muhammad Peeral, which hit him on his left side of temporal region, on the right side of nipple and abdomen, accused Nawab made fire with intention to commit murder of Naeem which hit him at his left knee and thigh who raised cries and fell on the ground. Accused Nazir made fires upon minor Muhammad Peeral with intention to commit his murder, which hit him at right arm and right leg, Accused Wazir Ali also made fire upon Naeem, which hit him at his knee. Accused Abdullah alias Jogi opened fire upon Nadir, which hit him at his abdomen, at the ankle of left arm and at the thigh of left leg. Accused Ali Asghar and Muhammad Ismail opened fires upon Muhammad Peeral and Nadir, who sustained fire at arms, legs and other parts of the

body, two unidentified accused also made fires upon the complainant, her husband and Naimatullah with intention to commit their murder, made fires upon them. The motorcycles of the complainant party were also damaged. Thereafter, complainant, her husband and brother-in-law namely Naimatullah raised cries of murder. The complainant rushed towards the accused whereupon accused Ajeeb gave butts blow to her, thereafter, all the accused made indiscriminate firing upon them, which attracted the passer by people who reached at the spot, by such act of firing, terror and panic were created. The accused while making aerial firing ran away towards the banana garden, and then complainant saw that her minor son Muhammad Peeral and brother in law Nadir Ali had succumbed to the injuries while another son Naeem Ahmed was seriously injured. She informed the incident to the police station P.S Shah Hussain, wherefrom after conducting necessary formalities, the dead bodies and injured after issuance of letter, referred to Civil Hospital, Khairpur. After getting postmortem of the deceased and treatment of injured returned back to her village and after funeral, she appeared at Police Station and lodged the above said FIR.

3. After usual investigation, police submitted the challan before the Court of Anti-Terrorism, Khairpur. Thereafter, the

applicants filed an application U/S 23 of ATA,1997 before the Court of Anti-Terrorism, Khairpur, but the same was dismissed vide order dated 16-09-2022, which was challenged by them before this Court by filing Crl. Revision Application No.D-39/2022, which was allowed and case was transferred to Ordinary Court/Sessions Judge Khairpur, wherefrom the case is assigned to the Court of IInd Additional Sessions Judge Khairpur, for trial. Prior to this, the applicants/accused moved likewise bail application before the trial Court, but the same was dismissed vide order dated 04-05-2023, hence they have impugned the said order by filing the instant Crl. Bail Application before this Court and seek their release on bail.

4. Learned counsel for the applicants/accused submits that the applicants/accused are innocent and have falsely been implicated in this case by the complainant due to previous enmity, which is admitted by the complainant in the FIR; that there is inordinate delay of about 12 hours in lodging the FIR and such delay has not been explained; that the role attributed against the applicants/accused is that they have caused injuries to the deceased persons on non-vital parts of their body; that statement of injured P.W Naeem Ahmed has not yet been recorded by the investigating officer; that case has been challaned and applicants/accused are not more required for

further investigation. In support of his arguments, he placed his reliance on the cases of *Amanullah alias Mithu Vs. The State (1998 SCMR 354)*, *Shahzaman and 2 others Vs. The STA and another (PLD 1994 Supreme Court 65)* and *unreported case/Bail Application No.S-324/2014 of Honourable High Court of Sindh, Circuit Court Hyderabad*.

5. On the other hand, Syed Sardar Ali Shah Rizvi, Additional P.G for the State assisted by Mr. Shahid Ali Phulpoto, advocate for the complainant have strongly opposed the grant of bail to the applicants/accused on the ground that they are nominated in the FIR with specific role as they along with co-accused being armed with deadly weapons in prosecution for their common intention and object, came at the place of incident, made straight fires upon the complainant party and committed the murder of Nadir Ali, Muhammad Peeral and also caused injuries to complainant and her son Naeem Ahmed; hence they are not entitled to the concession of bail, therefore their bail plea may be rejected. They further contended that learned counsel for the applicants/accused has not denied the participation of applicants/accused in the commission of offence, but he emphasized that the injuries attributed to the applicants/accused are on non-vital parts of the bodies of deceased.

6. I have heard the learned counsel for the parties and perused the material available on record with their able assistance.

7. The record reflects that applicants/accused are nominated in the FIR with specific roles as they, along with co-accused duly armed with deadly weapons in furtherance of their common intention and object, came at the place of incident, made indiscriminate firing upon the complainant party, and committed the murder of two persons namely Nadir Ali aged about 27/28 years and a minor boy Muhammad Peeral aged about 04 years. Minor deceased Muhammad Peeral sustained in all 13 firearm injuries, while deceased Nadir Ali sustained in all 16 injuries at vital and non-vital parts of their bodies. Moreover, the complainant and P.W Naeem Ahmed have also sustained injuries at the hands of the accused persons. During the incident, the motorcycles of the complainant party were also damaged. Prima facie, the applicants aimed their weapons and fired upon deceased. There is no differentiation made between vital and non-vital parts of the human body. The trajectory of a bullet is not influenced or directed by the assailant's choice, and they cannot use poor marksmanship as a justification for leniency during the bail stage. According to the post-mortem report, the death of the deceased occurred due to

multiple firearm injuries, damaging the vital parts of the body causing severe bleeding and resulting in death. [Underlying for emphasis]. Therefore, the argument put forth by the learned counsel for the applicants lacks legal validity. Reliance can be placed in the case of *Allah Dewayo V/S The State, 2023 SCMR 1724*.

8. During the investigation, the applicants/accused persons were arrested, and crime weapons on the pointation of the accused and empties have also been secured by the investigating officer while visiting the place of the incident. The I/O recorded the statements U/S 161 Cr.P.C of the P.Ws, who supported the version of the complainant. The delay of 12 hours in lodging the FIR, as contended by learned counsel for the applicants/accused, is plausibly reasoned, as soon after the incident, the injured and dead bodies were brought to the police station, where from the same were referred to Civil Hospital, Khairpur for postmortem of the deceased and treatment of the injured and after post mortem and funeral of the deceased persons, the complainant appeared at Police Station and lodged the FIR; hence the delay in lodging the FIR has fully explained by the complainant. The record further reflects that prior to the lodging of this FIR, deceased Nadir Ali lodged FIR bearing Crime No. 113/2022 at Police Station, B-

Section U/S 506/2, 114, 337H(2) PPC against the co-accused Rano, Najeeb, Allah warayo, Nazeer, Wazeer and Nawab, but he was doomed to death in the present case.

9. Prima facie, after meticulous assessment of the material available on record, there are reasonable grounds to believe that the applicants/accused are involved in the commission of the alleged offence, which is punishable by death or imprisonment for life. The citations referred to by learned counsel for the applicants/accused are on different footings; otherwise, the precedents in bail matters are of no help to a party, as it varies from case to case depending upon the facts of each case. For the above-stated reasons, I have come to the conclusion that the applicants/accused have failed to make out a case for a grant of bail at this stage. I, therefore, find no merits in the bail application, and it is *dismissed*.

10. Needless to mention that the observations made hereinabove are tentative in nature and shall not cause prejudice to the right of either party at trial.

J U D G E