ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Crl. Post-Arrest Bail Application No.S-355 of 2023

Date of hearing	Order with signature of Judge

For hearing of bail application.

Syed Ali Murtaza Shah, advocate for applicant.
Syed Sardar Ali Shah, Additional Prosecutor General.

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O R D E R.
28-08-2023.

***KHADIM HUSSAIN SOOMRO*, J.** I intend to dispose of above mentioned post arrest bail application filed on behalf of Asif Ali Khaskheli respectively in Crime No. 22/2023, u/s 302, 147, 148, 149 PPC registered at Police Station Faiz Ganj. Prior to this, applicants moved post-arrest bail application before the trial Court, but same was turned down vide order dated 27-04-2023, hence he has filed the above mentioned bail application.

2. Brief facts of the prosecution case are that complainant Ali Hyder Khaskheli lodged the FIR on 29-01-2023 alleging therein that on 28-01-2023, he along with his brother Ali Abbas, Ali Nadir, and nephew Ahsan Ali were sleeping in front shad of the shop of Ali Abbas. On 29-01-2023 at about 1:00 am in the night, they saw and identified on solar bulbs; accused Imad Ali with lathi, Asif Ali with gun, Ghulam Mustafa, Subhan, Rahim Dino with lathis and two unidentified persons with guns came and overpowered upon them and expressed them they will kill Ali Abbas, then within their sight accused Imdad Ali caused lathi on back side head of Ali Abbas, accused Subhan caused him lathi blow on right side of his head, accused Seengar caused him lathi blow at his mouth, accused Ghulam Mustafa caused lathi blow on his nose. The complainant's brother fell to the ground and cried out, causing the complainant party to also cry

out. As a result, the accused individuals were able to escape successfully. The complainant brought his injured brother to the Police Station. After receiving a letter, the injured individual was referred to RHC Faiz Ganj. From there, he was further referred to Nawab Shah Hospital, where, unfortunately, the injured person named Ali Abbas passed away due to his injuries. The dead body was taken to RHC Faiz Ganj, where a post-mortem was conducted. After the post-mortem was completed, the dead body was returned to the complainant. The complainant then buried the body and later went to the police station to file the aforementioned FIR.

3. Learned counsel for the applicants/accused argued that the applicant is innocent and he has falsely been implicated in this case by the complainant; that as per FIR mere presence of the applicant/accused Rahim Dino alias Raham Ali being armed with guns is shown, otherwise no specific allegation of causing any kind of injury to deceased is levelled against him; that as per post mortem report of the deceased, he has not sustained any kind of bullet injury; that case has been challaned and applicants/accused is no more required for any further investigation; therefore, he is entitled to the concession of pre-arrest bail. In support of his arguments, he has relied upon the case of Muhammad vs. the State (2007 P.Crl.L.J 1848).

4. The record reflects that on 11-08-2023, the complainant appeared in person and filed a statement stating therein that he has full confidence upon learned Additional to proceed with the matter on his behalf. Learned Additional P.G. argued that the name of the applicant is mentioned in the FIR he was present at the relevant place of incident, he was part and parcel of the unlawful assembly, and lastly, he opposed the grant of bail.

5. I have heard learned counsel for applicant as well as Additional P.G and have gone through the material available on the record.

6. Undoubtedly, the name of the applicant accused Asif Ali, has been mentioned in the First Information Report (FIR) as being armed with firearm. However, it is important to note that no specific role or overt act has been attributed to him apart from his mere presence at the scene. Furthermore, there is no evidence to suggest that he caused any harm or injury to the deceased or any member of the complainant's party, which would substantiate his presence at the place of the incident. The participation of the applicant in the alleged commission of crime is yet to be established by the prosecution after recording evidence of P.Ws. The complainant acknowledges the existence of animosity regarding the ownership of the land in the First Information Report (FIR). The question of vicarious liability of the applicant will be determined at the trial. The presence of applicant/accused individuals at the scene and his involvement in the commission of offence were matters of further inquiry. In this regard I have been guided by the case of KHIYAL SABA V/S The STATE and others 2020 S C M R 340.

> *"After hearing the learned counsel for the parties at length and perusal of available record with their assistance, it has been observed by us that as per contents of FIR, precise allegation against the petitioners is that of causing injuries on the persons of Khanzada and Wahid. The MLRs of injured PWs reveal that Khanzada sustained two stab wounds during the occurrence, whereas there are bruises on the person of Wahid. There is no allegation in the FIR against the petitioners of causing any injury on the person of deceased Jaram Khan. During the course of arguments, learned counsel appearing on behalf of State has confirmed that nature of injuries of injured PWs has not yet been declared. He further confirms under instructions that nothing was recovered from the petitioners during the course of*

> *investigation. Petitioners are behind the bars since 19.05.2019. All these circumstances make the case of the petitioners one of further inquiry falling within the ambit of section 497, Code of Criminal Procedure".*

7. The investigation has been completed and challan has been submitted in the court of competent jurisdiction applicant accused is in custody since his arrest. He is no more required for further investigation. In view of above discussion, applicant/accused has made out a good case for grant of bail in the light of sub-section (2) of Section 497 Cr.P.C, hence the instant bail application is allowed, applicant/accused is admitted to bail subject to furnishing solvent surety in the sum of Rs. 100,000/- and P.R bond in the like amount to the satisfaction of Additional Registrar of this Court.

8. Needless to mention that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of the applicant on merits.

9. The aforesaid bail application stands disposed of in the above terms.

J U D G E

Nasim/PA