

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
 Crl. Bail Application No. S- 900 of 2023  
 (Agha Muhammad Pathan Vs. The State)

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**Hearing of case**

1. For Orders on office objection.
2. For Orders on MA No. 7678/2023 (Ex./A)
3. For hearing of Bail Application

**01-04-2024.**

Mr. Shabbir Ali Bozdar, Advocate for the applicant.  
 Mr. Shafique Ahmed Khan Leghari, Advocate for the complainant  
 Syed Sardar Ali Shah Rizvi, Additional P.G for the State.

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1. Over ruled.
2. Granted subject to all just legal exceptions.
3. It is alleged that the applicant with rest of the culprits after having formed an unlawful assembly and in prosecution of its common object committed murder of Amanullah by causing him fire shot injuries, for that the present case was registered. On conclusion of trial, the applicant and his co-accused were convicted u/s 302(b) PPC r/w Section 149 PPC and sentenced to undergo imprisonment for life as *Taz'ir* and to pay compensation of Rs.300000/- each to the legal heirs of the deceased by learned 3<sup>rd</sup>. Additional Sessions Judge/MCTC-II, Sukkur vide judgment dated 11.08.2020, it was set aside by this Court vide judgment dated 31.10.2023 with direction to learned trial Court to conduct *de novo* trial against the applicant and his co-accused. In the meanwhile the

applicant by making an application u/s 497, CrPC sought for his release on bail. It was dismissed by learned trial Court vide order dated 06.12.2023, it is in these circumstances, the applicant has sought for his release on bail from this Court by way of listed application u/s 497 CrPC.

It is contended by learned counsel for the applicant that he is in jail for more than seven years; no specific injury to the deceased is attributed to him and PW Salam Khan by filing his affidavit has declared him to be innocent; therefore he is entitled to be released on bail on point of hardship and further inquiry.

It is contended by learned Addl.PG for the State and learned counsel for the complainant that the ground for release of the applicant on bail on the basis of affidavit of PW Salam Khan was not taken before learned trial Court; therefore, it could not be taken before this Court. By contending so, they sought for dismissal of the instant bail application.

Heard arguments and perused record.

Admittedly, the applicant has been in custody for more than seven years; he now is seeking his release on bail on point of hardship and further inquiry on the basis of affidavit of PW Salam Khan. No such affidavit, however, was caused to be filed by the applicant before the trial Court together with his bail application. The ground not taken before learned trial Court for release of the

applicant on bail could hardly be taken before this Court. Consequently, the instant bail application is dismissed together with listed application with an advise to the applicant to repeat the same before the learned trial Court on the basis of affidavit of PW Salam Khan; If it is so moved then it to be considered as an additional ground for release of the applicant on bail (if any) together with the point of hardship, by the trial Court in accordance with the law.

**Order accordingly.**

Judge

ARBROHI