

ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No. S- 116 of 2024

(*Nazeer Ahmed Waseer. The State*)

1. For Orders on office objection.
2. For hearing of Bail Application

02-04-2024.

M/s Qurban Ali Malano, Israr Ahmed Shah and Syed Naimat Ali Shah advocates for the applicant.

Mr. Abdul Rasheed Kalwar, advocate for the complainant.

Mr. Shafi Muhammad Mahar, DPG PG for the State.

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Irshad Ali Shah, J;- It is alleged that the applicant with rest of the culprits in furtherance of their common intention committed murder of Ghulam Nabi by causing him fire shot injuries and went away by making aerial firing to create harassment, for that the present case was registered.

2. The applicant on having been refused post-arrest bail by learned Sessions Judge, Ghotki; has sought for the same from this Court by way of instant Crl. Bail Application u/s 497 Cr.P.C.

3. It is contended by learned counsel for the applicant that the applicant being innocent has been involved in this case falsely by the complainant party only to satisfy with him its dispute over matrimonial affairs; the FIR of the incident has been lodged with delay of about one day and role attributed to the applicant in commission of the incident is only to the extent that he caused fire shot injury to the deceased on his right elbow joint which is non-vital part of his body and the applicant is in custody since one year; therefore, he is entitled to be released on bail on point of further inquiry. In support of their contention, they relied upon cases of *Wajid Ali Vs. The State and another (2017 SCMR 116)* and *Hassan Iqbal Vs. The State (2023 P.Crl.J Note 100)*.

4. Learned DPG for the State and learned counsel for the complainant have opposed to release of the applicant on bail by contending that the delay in lodgment of FIR is well explained; the applicant has actively participated in commission of the incident by causing fire shot injury to

the deceased on his right elbow joint; on arrest from him has been secured the pistol which he allegedly used in commission of the incident, it has been found matched with two empties secured from the place of the incident. In support of their contention, they relied upon the case of *Allah Dewaho Shahani Vs. The State (2023 SCMR 1724)*.

5. Heard arguments and perused the record.

6. The applicant is named in the FIR with allegation that he with rest of the culprits went over to the complainant party and then committed murder of the deceased in furtherance of their common intention by causing him fire shot injuries. The specific role of causing fire shot injury to the deceased on his right elbow joint is attributed to the applicant. On arrest from him has been secured the pistol, which he allegedly used in commission of the incident and it on forensic examination has been found matched with two empties secured from the place of the incident. In that situation it would be premature to say that the applicant being innocent has been involved in the instant case falsely by the complainant party in order to satisfy with him its matrimonial dispute. The matrimonial dispute between the parties may be there but it may not be a reason for false involvement of the applicant in case like the present one. The delay in lodgment of FIR by one day is well explained in FIR itself, same even otherwise could not be resolved by this Court at this stage. The applicant has actively participated in commission of the incident; therefore, it would be immaterial to say that he has caused injury to the deceased on non-vital part of his body; therefore, it makes out a case for his release on bail. The applicant may be in custody for about one year but it is not enough period to enlarge him on bail in case like the present one, which entails capital punishment. There appear reasonable grounds to believe that the applicant is guilty of the offence, with which he is charged and no case for his release on bail is made out.

7. The case law which is relied upon by learned counsel for the applicant is on distinguishable facts and circumstances. In case of *Wajid Ali (Supra)* the accused was attributed role of causing fire shot injury to the complainant and not to the deceased, it is why he was admitted to bail. In the instant case, the applicant is attributed role of causing fire shot injury to the deceased. The case of *Hassan Iqbal (Supra)* has not binding

effect upon this Court having been laid down by Lahore High Court, even otherwise it cannot be given preference over the case of *Allah Dewayo Shahani (Supra)*, which is relied upon by learned DPG for the State and learned counsel for the complainant wherein the accused was refused bail even by Apex Court though he was attributed role of causing fire arm injury to the deceased on his hand and was also let off by the police during investigation.

8. In view of above, the instant bail application is dismissed.

Judge

Nasim/P.A