

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

Criminal Bail Application No.S-1280 of 2024

Applicant : 1) Fayaz Ali son of Sajawal Talpur, 2) Khamiso son of Sajawal Talpur, through Raja Jawad Ali Sahar, Advocate.

Complainant : Ashfaque Hussain D. Solangi, Advocate

Respondent : The State
Through Ms. Rameshan Oad, A.P.G.

Date of hearing : **20.01.2025**

Date of Order : **20.01.2025**

O R D E R

AMJAD ALI SAHITO, J:- Through the instant bail application, the applicants/accused above named seek their pre-arrest bail in Crime No.57 of 2020, under sections 302, 109, 147, 148 & 149 P.P.C, registered at P.S Sehwan, after their bail plea was declined by the learned Additional Sessions Judge-I, Kotri vide order dated 25.11.2025.

2. 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.

3. At the very outset, learned counsel for applicants requests for condonation of absence of applicant Fayaz Ali on the ground that he is unwell. His request is allowed and absence of applicant/accused Fayaz Ali is condoned. However, counsel further submitted that since the name of applicant/accused Fayaz Ali with specific role is mentioned in the FIR, therefore, to his extent he does not press instant bail application. Learned A.P.G for State raises no objection. In such view of the mater, the bail plea to the extent of applicant/accused Fayaz Ali

is hereby dismissed as not pressed and he is directed to surrender before the learned trial Court and may prefer his bail plea. So far as, the bail application of applicant/accused Khamiso is concerned wherein the role so assigned against him is that at the end of the contents of FIR the complainant disclosed that he instigated co-accused otherwise there is no active role against him in the commission of offence.

4, Learned counsel for the complainant as well as learned A.P.G for the State raised objection for grant of bail to the applicant/accused Khamiso.

5. Heard and perused.

6. Admittedly, in the entire FIR the role of the applicant/accused has not been disclosed by the complainant but at the end in the contents of FIR, complainant simply disclosed that on the instigation of co-accused Khamiso, co-accused committed the offence. It is yet to be seen whether the applicant/accused Khamiso has shared his common intention with co-accused or not. In this regard I am fortified with the case of Shahid Vs. The State (1994 SCMR 393), wherein the Hon'ble Supreme Court of Pakistan has granted bail to accused on the ground that accused was attributed the role of having caught hold the deceased when his co-accused was inflicted dagger blows to him. Under these circumstances, the allegation leveled by the prosecution against applicant / accused is yet to be determined by the trial Court after recording evidence whether he has shared his common intention with main co-accused or not.

7. In view of above, the applicant Khamiso is found entitled to grant of pre arrest bail in his favour and learned counsel for the applicant/accused has pleaded malafide on the part of complainant for his false implication in this case which cannot be ruled out, therefore, the bail application is allowed. Consequently, the interim

pre-arrest bail granted to the applicant/accused by this Court is hereby confirmed on the same terms and conditions.

8. 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 applicants on merits.

JUDGE

Ahmed/Pa,