

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 1617 of 2024

&

Criminal Bail Application No. 1657 of 2024

<i>Date</i>	<i>Order with signature of Judge</i>
Applicant Muhammad Islam son of Abdul Majeed in Cr. B.A No.1617 of 2024 (present on bail)	: through Mr. Zakir Leghari, Advocate
Applicants (i) Abdul Khaliq (ii) Muhammad Saleem, both sons of Muhammad Ramzan in Cr. B.A No.1657 of 2024	: through Mr. Zakir Leghari, Advocate
The State	: through Ms. Rahat Ehsan, Addl. Prosecutor General, Sindh
Complainant Riaz Ahmed son of Muhammad Alam Khan	: through Mr. Abdul Haleem Jamali, Advocate
Date of Hearing	: 01.10.2024
Date of Order	: 01.10.2024

ORDER

Muhammad Saleem Jessar, J:- By this common order, I propose to dispose these two bail applications viz. Criminal Bail Application No. 1617 of 2024 filed by applicant Muhammad Islam under Section 498-A Cr.P.C as well as Criminal Bail Application No.1657 of 2024 filed by applicants Abdul Khaliq and Muhammad Saleem under Section 497 Cr.P.C, as both arise out of one and same crime; hence, a common question of law as well as facts is involved. The applicants preferred their bail plea(s) before the Court of Sessions vide Criminal Bail Applications No.2118 and 2313 of 2024, which subsequently were assigned to learned 4th Addl. Sessions Judge, Karachi (West), who by a common order dated 20.07.2024 declined their request for grant of anticipatory bail. The applicants Abdul Khaliq and Muhammad Saleem were arrested by the police on 18.03.2024 and after completion of legal formalities, police have submitted challan before the Court of law

having jurisdiction which is now pending for trial before the Court of 4th Addl. Sessions Judge, Karachi (West) vide Sessions Case No. Nil/2021 (re-the State Versus Mola Bux and others).

2. Since the facts of the prosecution case are already mentioned in the FIR, which is annexed with the Court file(s), therefore, there is no need to reproduce the same.

3. Learned counsel for the applicants submits that though the applicants have been nominated in the FIR, yet no specific role was assigned to them nor any incriminating or offensive weapons were recovered or produced by them during investigation. He further submits that co-accused Muhammad Hassan as well as others having identical role have already been granted bail by the Court below, yet the applicants have been refused. While arguing the case, learned counsel submits that it is a case which was registered at the instance of a land grabber namely Hameedullah, who is a habitual in getting registered false cases against innocent citizens. In support of his contention, he draws attention of the Court towards pages-49 and 61 where copies of two FIRs viz. FIR No. 902 of 2024 registered with P.S Manghopir, Karachi for the offence punishable under Sections 147, 148, 149, 435 & 324 PPC as well as FIR No.713 of 2022 registered with P.S Mangophir, Karachi for the offence punishable under Sections 324, 147, 148 & 149 PPC, were got registered by said Hameedullah and later he entered into compromise with those persons against whom he got registered the cases. According to learned counsel, said Hameedullah is a land grabber and he, after encroaching upon properties, dispossesses the owners illegally and then gets registered false FIRs against them and later enters into compromise only to water his greed. He further submits that instant case was also registered at his instance and this fact was admitted by the complainant in his statement before the police (available at page-85 of the Court file). He further argues that 161 Cr.P.C statement of the injured / deceased Muhammad Younis was recorded on 20.03.2024; besides, remaining PWs were examined under Section 161 Cr.P.C by the police on 21.03.2024 i.e. with a delay of about 3/4 days from the date of FIR; hence, such statements carry no weight in the eye of law. He further submits that since the co-accused have already been bailed out, therefore, present

applicants may also be extended constant treatment on the law of parity. In support of his contention, learned counsel places reliance upon the cases of (i) *AKHTAR ULLAH alias AKHTAR ALI Versus The STATE and another* (2021 SCMR 1287), (ii) *JAVAID KHAN and others Versus The STATE and others* (2021 P.Cr.L.J Note 3), (iii) *KAMRAN KHAN Versus The STATE and another* (2021 P.Cr.L.J 1643), (iv) *HUSSAIN AHMED Versus The STATE and others* (2021 SCMR 1263), (v) *ADEEL RAMZAN Versus The STATE through Aamir Khalil and another* (2021 P.Cr.L.J Note 20) and (vi) *MUHAMMAD RAMZAN Versus The STATE and others* (2021 SCMR 1914).

4. On the other hand, learned Addl. P.G, Sindh appearing for the State, opposes the bail applications on the ground that injured/deceased Muhammad Younis had implicated the applicants in his 161 Cr.P.C statement dated 20.03.2024 with specific role, therefore, applicants are not entitled for the bail. She; however, could not controvert the fact that co-accused Muhammad Hassan having similar role has already been granted bail by the Court below on an Affidavit sworn in by the complainant.

5. Learned counsel for the complainant along with complainant, also opposes the bail application on the ground that applicants are not only nominated in the FIR but have been assigned role of firing upon the injured/deceased through their pistols, therefore, they are not entitled for the bail, as claimed. He as well as Addl. P.G, Sindh; however, admit that nothing incriminating including offensive weapon has been shown to have been recovered from the applicants during investigation.

6. **Heard arguments, record perused.** No doubt, the applicants are nominated in the FIR with a role of firing from their respective pistols upon the injured which later resulted in his death. Per FIR even 161 Cr.P.C statement of the injured/deceased, no specific role of causing fire arm injuries to him, has been assigned. Per FIR as well as 161 Cr.P.C statements of the injured as well as remaining PWs, all four accused had allegedly fired but the deceased had sustained only two injuries on his person and out of four accused, one has been granted bail by the Court below on an Affidavit sworn in by the complainant. Moreover, it has not been specified by the prosecution that out of four accused, whose fire was

found effective and fatal for the life of deceased more particularly when there is no specification about seat of the injuries allegedly sustained by the injured/deceased.

7. The deceased was married and he at the time of his death, had left one widow namely Mst. Hidayat Khatoon, three sons namely Uzair aged about seven years, Zaheer aged about 2/3 years and Aftab aged about one year and two daughters namely Zoya aged about six years and Pari aged about 3/4 years. The trial Court while granting bail to co-accused Muhammad Hassan had not considered legal aspect of the case whether complainant, though brother of the deceased in presence of legal heirs of the deceased, was himself competent to enter into compromise and can extend his no objection for grant of bail to co-accused or otherwise. Co-accused Mola Bux, Muhammad Aslam and Muhammad Hassan have already been bailed out by the trial Court and the applicants have been declined their request on same set of allegations. Moreover, the I.O had recorded 161 Cr.P.C statements of the PWs including injured/deceased with a delay of about 3/4 days for which no plausible explanation has been furnished. Such conduct on the part of prosecution casted serious doubt upon veracity of the prosecution evidence. The complainant had also admitted in his statement before the police (available at page-85 of the Court file) that he had got registered instant FIR at the instance of Hameedullah, a famous land grabber of the area. Since nothing incriminating has been shown to have been recovered from present applicants nor they have produced the same before the police during investigation; besides, co-accused Muhammad Hassan and others having identical role, have already been extended grace of bail by the Court below; hence, the propriety of law demands that applicants should also be extended constant treatment.

8. In the circumstances and in view of above factual position, applicants have made out a good prima facie case for their release/admission to bail in terms of further inquiry within meaning of sub-section (2) to section 497 Cr.P.C. Consequently, both bail applications are hereby **allowed**. Interim bail granted earlier to applicant Muhammad Islam son of Abdul Majeed, on 23.07.2024 (*in Criminal Bail Application No.1617 of 2024*) is hereby **confirmed** with a modification in order dated 23.07.2024 that applicant shall furnish a

fresh surety in the sum of Rs.500,000/- (Rupees Five Lacs Only) with P.R Bond in the like amount to the satisfaction of the trial Court. Whereas, Applicants Abdul Khaliq son of Muhammad Ramzan and Muhammad Saleem son of Muhammad Ramzan (*in Criminal Bail Application No.1657 of 2024*) **shall be released** on bail subject to furnishing their solvent surety(ies) in the sum of Rs.500,000/- (Rupees Five Lacs Only) each and P.R Bond in the like amount to the satisfaction of learned trial Court.

9. Applicant Muhammad Islam present before the Court is directed to continue his appearance before the trial Court without negligence and in case he may misuse the concession or may temper with the prosecution's evidence then the trial Court would be competent to take legal action against him as well to his surety in terms of Section 514 Cr.PC. Trial Court is also hereby directed to make necessary arrangements for securing attendance of the prosecution witnesses and conclude the trial within shortest possible time under intimation to this Court through MIT-II.

10. Let copy of this Order be communicated to trial Court through learned Sessions Judge, concerned. Learned MIT-II to ensure compliance.

11. Office to place a signed copy of this order in the connected bail application/file.

JUDGE

Zulfiqar/P.A