

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

**Criminal Bail Application No.S-975 of 2024**

Applicants: Shahdad Khan, Bano and Arbab Ali through Mr. Meer Ahmed Mangrio, Advocate.

Complainant: Lakhano through Mr. Ayaz Ali Gopang, Advocate who has placed Vakalatnama on his behalf.

The State: Through Mr. Shewak Rathore, Deputy Prosecutor General Sindh.

Date of hearing & decision: **04.10.2024.**

**ORDER**

**ZULFIQAR ALI SANGI, J:-** Applicants Shahdad Khan, Bano and Arbab Ali seek pre-arrest bail in FIR No.11 of 2024 registered under sections 302, 324, and 34 P.P.C at PS Mari Jalbani as their earlier bail for same relief was declined by the learned Additional Sessions Judge-VI, Sakrand vide impugned order dated 30.08.2024, hence this bail application.

2. As per FIR the allegations against the applicants Shahdad Khan is that he fired from gun directly upon deceased Waseem Sabki (son of complainant), Bano made direct gunshot upon Mitho (brother of complainant) and Arbab Ali caused firearm gunshot injury upon Muhammad Ali (brother of complainant) whereas co-accused who is not before this Court namely Jumoo had fired upon deceased Muhammad Urs alias Sodoro (son of complainant) in order to satisfy dispute of plot, hence the FIR.

3. It is contended by learned counsel for applicants that there appears an enmity in between the parties over plot situated in a village hence false implication cannot be ruled out; that earlier during investigation the injured PWs have supported the prosecution's case; however, subsequently in re-investigation they changed their version and they generalize the allegations; that they have no concern with main co-accused Jumoo who is allegedly involved in commission of offence; that the recovery from place of incident not connecting the present applicants; that applicant-Shahdad Khan at the time of alleged incident was posted at same police station and he was implicated by the complainant party with malafide intentions; that in the re-investigation all these applicants were found innocents and were released by the police under section 497 Cr.P.C. In support of his contentions, he placed reliance upon the cases reported as *2021 SCMR 130*, *2022 SMCR 198* and *2023 SCMR 1898* having prayed that pre-arrest bail of the applicants may be confirmed.

4. The bail plea has been opposed by counsel for complainant and learned DPG on the ground that applicants are named in the FIR with specific roles that two innocent teenagers sons of the complainant one having 13 years age and other is 14 years of age were brutally murdered; that in initial investigation they were found guilty and an interim challan against them was submitted; however, they succeeded to manage re-investigation and police officials to save skin of their brother have let-off and released them under section 497 Cr.P.C; that injured PWs have supported their version; however, the second statement has not been recorded by I.O for that they have made complaint to the Magistrate on that basis cognizance was taken. They relied upon the case of *SBLR 2024 Sindh 827* in support of their contentions.

5. I have heard learned counsel for respective parties and perused the record available.

6. From perusal of record it appears that the incident took place on 10.03.2024 at 0730 hours and was reported promptly at police station at 1650 hours wherein along-with present applicants co-accused were nominated with specific roles for causing firearm gunshot injuries to the two deceased namely Muhammad Urs alias Sadoro (by co-accused Jumoo) & Waseem Sabki (by **present applicant-Shahdad Khan**) while two injured persons namely Mitho (received gunshot injury of **present applicant-Bano Sabki**) and Muhammad Ali (received gunshot injury of present **applicant-Arbab Ali**). In the case of SHOUKAT ILAHI V. JAVED IQBAL AND OTHERS (2010 SCMR 966), wherein Honourable Supreme Court of Pakistan while rejecting the bail plea has observed as under:-

*“6. We have given due consideration to the submission made and have gone through the material available on record. From the record, we find that the name of the petitioner was mentioned in the FIR; that the motive had been alleged against him; that a specific role of raising Lalkara was assigned to him and that it was specifically mentioned that he and co-accused fired at the deceased, which hit him. The PWs have supported the case in their 161 Cr.P.C statements which is further corroborated by the medical evidence, as according to Medical Officer the deceased had six firearm injuries out of them two were exit wounds. Thus, prima facie incident has been committed by more than one person. From the material available on record, we are of the view that there are reasonable grounds for believing that the petitioner is involved in the case.”*

*(emphasize supplied)*

In the first investigation carried out by SIP Ali Hassan Solangi, they were directly implicated in the commission of alleged offence and thereafter SIP Khalid Hussain Lakho also conducted the investigation having supported the conclusion of SIP Ali Hassan Solangi; however, subsequently applicants party succeeded to manage re-investigation process conducted in supervision of DSP Long Khan Shar wherein on the basis of fresh 161 Cr.P.C statements the case was recommended against the applicants that they are innocent; however, record reflects that complainant and injured persons appeared before the learned Magistrate and had negated their such statement(s) and on that basis cognizance was taken. In a similar circumstances, the Supreme Court of Pakistan in case of Allah Dewayo Shahani Vs. The State through Prosecutor General, Sindh [2023 SCMR 1724], while rejecting the bail plea has held as under:

*“5. Heard the arguments. It is an admitted position that the death of Sardar Bux was caused due to fire arm injuries. The delay of one day in lodging FIR has already considered by the High Court with ample reasoning which is not fatal to the prosecution*

case in the given circumstances. According to the ocular account, the petitioner caused fire arm injury to deceased on his right hand but on investigation, he was let off by the police by placing his name in column No.2 of the charge sheet. The learned counsel tried to assert that the injury attributed to the petitioner was on the right palm, but according to the postmortem report the said injury is shown at the wrist, hence it is a case of further inquiry, but we do not rely on a sole ground for the enlargement on bail when the ocular account is assigning a specific role to the petitioner. It is a well settled exposition of law that the police report is not binding being ipse dixit, and therefore merely an assertion at this stage without proof or opinion. Despite inserting the name in column No.2, the Magistrate did not accept the report and the petitioner was called upon to join the trial for which non-bailable warrant was issued for the arrest of petitioner. It is also reflected from the impugned order that co-accused Muhammad Aslam in a similar role was refused pre-arrest bail by the High Court and he subsequently withdrew his bail application from this Court, and according to the learned counsel for the petitioner, co-accused Muhammad Aslam is still behind bars.

.....8. So far as the plea of alibi is concerned, nothing is said that at the time of commission of the offence mentioned in the FIR, no proper details were provided to demonstrate that the petitioner was actually behind bars in some other case and on which date and time he was released by the Magistrate in the other case. Even otherwise, the plea of alibi cannot be taken at this stage of bail, which was also not given any consideration by the Trial Court and the High Court. The learned counsel for the petitioner referred to the case of Zaigham Ashraf v. The State (2016 SCMR 18). In this case bail was allowed on the ground that, though the accused was initially implicated by the complainant for being present at the crime scene and made direct fire on the deceased, but during the course of investigation it was discovered that the accused was behind bars in some other case at the time of occurrence, hence the presence of the accused at the crime scene at the time of commission was excluded. The learned counsel also referred to another order of this Court

*rendered in the case of Chaudhary Nadeem Sultan v. The State (2022 SCMR 663). In this case also the plea of alibi was taken. The findings recorded by this Court in the order depict that, though the petitioner was ascribed the direct role of causing firearm injury to the deceased, but the CPO present in the Court stated that about 100 persons appeared before the investigating officer; amongst those, 18 persons furnished their duly verified affidavits that at the time of occurrence the petitioner was present in the chelum of a fellow villager, and even the son of the deceased had furnished an affidavit in which he specifically stated that at the time of occurrence the petitioner was present in the chelum. We have considered both the aforesaid orders cited by the learned counsel for the petitioner in support of his submissions, but, in our considered view, the aforesaid orders are distinguishable to the facts and circumstances of the present case. Even otherwise, in criminal cases, including bail matters, each case has its own peculiar facts which are to be considered according to the facts and circumstances of each case.*

*(emphasize supplied)*

From perusal of above, it reflects that in that case after second investigation applicant was released by the police and his pre-arrest bail was rejected by this Court and he approached the Supreme Court where Supreme Court by maintaining order of this Court has refused the bail. The case in hand is identical to that case. On tentative assessment it appears that sufficient material available on record which connects the present applicants with the commission of alleged offence coupled with direct roles for causing firearms injuries to the deceased and injured PWs, as such, they are not entitled for bail. The case in which the applicants are involved punishable upto death and falls within the prohibitory clause of section 497 Cr.P.C. Applicants have failed to point out any ill-will of the complainant to falsely implicate them in this case which is very essential in cases of pre-arrest bail.

7. In view of foregoing, the applicants failed to make out their case for confirmation of pre-arrest bail. As such, instant criminal bail application was **dismissed** resultantly interim pre-arrest bail already granted to applicants vide order dated 03.09.2024 was recalled vide short order dated 04.10.2024. These are reasons for the same.

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

JUDGE