

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.
Crl. Bail Appln. No.S-326 of 2024

Date	Order with signature of Hon'ble Judge
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1. **For orders on office objection.**
2. **For hearing of Bail Application.**

Applicant : Aslam Dashti, through Mr. Asif Ali Abdul Razak Soomro, Advocate.

Complainant : Daim Khan Dashti, through Mr. Javed Ahmed Soomro, Advocate.

The State : Through Mr. Ali Anwar Kandhro, Additional Prosecutor General.

Date of hearing : 13.11.2024.
Date of Order : 13.11.2024.

ORDER

ARBAB ALI HAKRO, J.- Having been declined the application for grant of post-arrest bail by the learned Additional Sessions Judge, Kashmore vide order dated 03.6.2024 in Crime No.111 of 2023, registered at Police Station Kashmore, for offence under Sections 302, 337-H(2), 114, 148, 149, PPC, Applicant Aslam, son of Moula Bux, by caste Dashti, has approached this Court with the same prayer.

2. Per FIR, the facts of the prosecution case, in brief, are that on 31.05.2023, at about 7.30 p.m. time, at Shahi Pull/Bridge near Dakhan Bungalow in Deh Gulanpur, **the applicant, allegedly armed with T.T. Pistol**, and co-accused, eight in number, named in the FIR, being armed with KKs, gun, pistols and hatchet, attacked upon the complainant party, wherein on the instigation of co-accused Asghar Dashti, accused Wali Muhammad fired with gun, accused Muhammad Ameen fired with T.T. Pistol and applicant/accused Muhammad Aslam **fired with gun**, upon Muhammad Yousuf, thereby causing death of Muhammad Yousuf and then all the accused persons making aerial firing left the scene.

3. Learned counsel for the applicant submits that the applicant has been implicated falsely in this case by the complainant party in the background of a previous matrimonial dispute, which is admitted in the FIR. He further

submits that there is a delay of 03 days in lodging the FIR, for which no plausible explanation has been furnished by the complainant. He next submits that per FIR, though the applicant is shown armed with a T.T. Pistol, he is alleged to have made gunfire upon the deceased; that the matter relating to simple death and not the murder of the deceased was recorded at PS Kashmore vide entry No.25, at 2040 hours, dated 31.5.2023; that per FIR, single gun fire attributed to the applicant is shown to have hit at the left side of neck of the deceased, whereas the injury No.1 appearing in the postmortem report of deceased reflects the *lacerated punctured wound measuring 03cm x 03cm (of entry wound nature) due to the entrance of multiple bullets entry into muscle deep over left side of neck at its lower margin*, which conflicts with the ocular version given in the FIR. Learned counsel submits that the eyewitnesses Asif Ali and Shahid Hussain, in their 161, Cr.P.C statements, as well as complainant Daim Khan in his supplementary/further statement, have stated that the applicant Aslam had made a pistol shot upon the deceased. Counsel contends that co-accused Shah Jahan has been bailed out by the trial Court, whereas co-accused Mehmood Dashti has been granted bail by this Court. So far the absconsion is concerned, Mr. Soomro contended that the law is settled that where an accused person is found entitled for grant of bail on merits, mere absconsion shall not intercept his way for extending such concession to him. Lastly, Mr. Soomro submitted that in the background of previous enmity between the parties, coupled with a delay of 03 days in lodging an FIR and in view of the above discrepancies on the face of the record, the case against the applicant requires further enquiry. Therefore, he may be granted bail. He has relied upon the cases reported as *Syed Amanullah Shah v. The State and another (PLD 1996 SC 241)*, *Awal Khan and 7 others v. The State through AG-KPK and another (2017 SCMR 538)*, *The State v. Ghulam Rasool (2004 PCr.LJ 1189)* and *Nooruddin and another v. The State (2005 MLD 1267)*.

4. Learned Addl. PG, appearing for the State as well as learned counsel for the complainant, vehemently opposed the bail application, contending that the applicant is nominated in the FIR. The specific role of firing at the deceased is also assigned to him, which is fully corroborated by the medical evidence in the shape of postmortem report of the deceased; the PWs have also fully implicated the applicant with the commission of murder of the deceased; that after commission of the crime, the applicant remained absconder and was declared proclaimed offender by the trial Court; that the grounds urged on behalf of the applicant involve deeper appreciation of the

material, which is not permitted under the law, therefore, the applicant has no case for grant of bail. Learned counsel for the complainant has relied upon the cases reported as *Allah Dewayo Shahani v. The State through Prosecutor General, Sindh (2023 SCMR 1724)* and *Sheikh Muhammad Nadeem v. The State and another (2019 MLD 507)*.

5. Heard learned counsel for the applicant, learned counsel for the complainant, learned Addl. P.G. for the State, and perused the available material.

6. According to the prosecution, the occurrence occurred on 31-05-2023 at 7:30 p.m., whereas the FIR was lodged on 03-06-2023 at 10:00 p.m. No doubt, the applicant is nominated in the FIR, but the tentative assessment of the record reveals glaring conflict in the narration of the FIR and the postmortem report of deceased Muhammad Yousuf. In the first part of the FIR, the complainant alleged that applicant Aslam was armed with a T.T. Pistol, but in the second part of the FIR, he alleged that applicant Aslam fired a gunshot at the deceased, hitting him on the left side of his neck. Not only this, but the eyewitnesses of the alleged incident, namely Asif Ali and Shahid Hussain in their 161 Cr.P.C statements, as well as the complainant Daim Khan in his supplementary/further statement, recorded before police, have clearly stated that the applicant Aslam was armed with a pistol. He had fired a pistol shot at the deceased. However, the postmortem report of the deceased reveals that the injury cited at Sr.No.1 attributed to the present applicant is not an injury caused by pistol shot, but the postmortem report describes the injury as a "***lacerated punctured wound measuring 03cm x 03cm (of entry wound nature) due to entrance of multiple bullets entry into muscle deep over left side of neck at its lower margin***", which *prima facie* suggests that the injury was caused by multiple bullets, which is inconsistent with the claim that the applicant Aslam fired a single pistol shot. Thus, there is a conflict between ocular and medical evidence, and it is now well settled where medical evidence conflicts with an ocular account; the benefit of the doubt must be extended to the accused, even at the bail stage. Reliance is placed on "**Syed Khalid Hussain Shah v. The State and another (2014 SCMR 12)**" and "**Awal Khan and 7 others v. The Sate through AG-KPK and another (2017 SCMR 538)**". Apart from this, entry No.25 dated 31.5.2023, recorded by duty officer ASI Hidayatullah Khoso at 2040 hours at PS Kashmore, shows that one Mehmood Khan, named as one of the accused in the FIR and complainant Daim Khan had reported a simple death

and not the murder of the deceased. So far, alleged absconson of the applicant is concerned, Mr. Soomro's contention that if an accused is found to be entitled for grant of bail on merits of the case, the concession of post-arrest shall not be denied to him. The case of **Mitho Pitafi v. The State** reported in **2009 SCMR-299** can be referred in this regard.

7. All these facts, if viewed in the background of previous enmity between the parties and delay of 03 days in lodging of FIR, make the case of the applicant one of further enquiry in terms of sub-section (2) to Section 497, Cr.P.C. The applicant is behind bars, and the police have completed their investigation and do not require him for further probe; therefore, his continuous incarceration could not serve any useful purpose.

8. Accordingly, this bail application is allowed. The applicant is directed to be released on bail on his furnishing solvent surety in the sum of Rs.200,000/- (Rupees two hundred thousand only) and P.R. Bond in the like amount to the satisfaction of the trial Court.

9. It needs no reiteration here that the observations recorded hereinabove are only tentative and shall not influence the trial Court in any manner during the trial.

Judge

Qazi Tahir PA/*