

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

***Crl. Bail Application No.S-1013 of 2024***

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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*For hearing of bail application*

Date of hearing **17.02.2025**

Mr. Badaruddin Memon, Advocate for applicant.  
Mr. Ameer Hussain Solangi, Advocate for complainant.  
Mr. Khalil Ahmed Maitlo, Deputy Prosecutor General.

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**ORDER**

***Riazat Ali Sahar, J.*** Through instant bail application, applicant/accused Kamil son of Dur Muhammad Koondhar seeks post-arrest bail in Crime No.58/2024 Police Station, Khanwahan district Naushehro Feroze for offence punishable under Sections 302, 114, 148, 149, 337H(ii), 34 PPC.

2. The earlier bail plea of the applicant has been declined by the learned Additional Sessions Judge, Kandiaro vide order dated 19.12.2024 in Criminal Bail Application No.2951 of 2024 with the reasoning that the applicant / accused is nominated in FIR.

3. The prosecution's case, as outlined in the First Information Report (FIR) lodged by the complainant, Akhtar Hussain, at Police Station Khanwahan, is as follows: On 13-05-2024, while the complainant and others were present at their residence, a group of nine individuals, including the applicant, Kamil (the accused), unlawfully entered the premises. The said accused, Kamil, was armed with a firearm and discharged it into the air (aerial fire), thereby instilling fear and intimidation among those present. Meanwhile, co-accused Ghulam Yaseen and Musadiq actively abetted and facilitated the commission of the offence by providing assistance to their accomplices, namely Toufique

and Qalandar Bux, who were armed with a pistol and a repeater. These two individuals proceeded to open direct fire upon the deceased, Muhammad Akram, resulting in his instantaneous death at the scene of the incident. Subsequent to the occurrence, the complainant promptly approached Police Station Khanwahan and formally registered the FIR, setting the law into motion.

4. The learned counsel for the applicant asserts that the applicant has been falsely implicated in the present case by the complainant with mala fide intent and ulterior motives, stemming from pre-existing enmity. It is contended that no specific role has been attributed to the applicant, apart from his mere presence at the scene of the occurrence while in possession of a firearm. Notwithstanding the absence of a direct allegation against him, the applicant was arrested during the course of the investigation on 14-05-2024, allegedly in possession of a pistol. It is further argued that the recovery of the said pistol from the applicant was subjected to forensic analysis, whereby the weapon was sent to a ballistic expert along with the empty shells recovered from the crime scene. Surprisingly, the forensic report indicated that the pistol and the empty shells matched, despite the fact that, according to the prosecution's own case, the applicant was allegedly armed with a shotgun at the time of the incident. Moreover, the only role ascribed to the applicant in the occurrence is that of aerial firing, without any allegation of his direct involvement in the commission of the principal offence. As such, it remains to be determined by the learned trial Court, upon proper appreciation of evidence, whether the applicant had any role in the commission of the alleged offence. The learned counsel further submits that co-accused Ghulam Yaseen and Musadiq, who are alleged to have facilitated the principal accused, have already been granted pre-arrest bail by the learned trial Court. The complainant subsequently challenged the said order before this Honourable Court, which dismissed the challenge through an order dated 28-11-2024. Similarly, co-accused Amir has been granted post-arrest bail by the learned trial Court vide order dated 08-10-2024. In view of these circumstances, the principle of parity is applicable to the case of the present applicant. It is also contended that the question of vicarious liability is to be determined at

the time of trial after the recording of evidence. Furthermore, as the challan has already been submitted before the trial Court, the applicant is no longer required for further investigation. In light of these submissions, the learned counsel prays for the grant of bail to the applicant. In support of his contentions, reliance has been placed on *Muhammad Nadim v. The State and another* (2023 SCMR 184) and *Javed Iqbal v. The State through Prosecutor General of Punjab and another* (2022 SCMR 1424).

5. Conversely, the learned counsel for the complainant, while opposing the grant of bail, submits that, as per the police record, the pistol in question was indeed recovered from the applicant. It is further contended that although the complainant was dissatisfied with the investigation conducted by the Investigating Officer (I.O.), no formal complaint was lodged by him before any higher authority within the Police Department. The learned counsel argues that the applicant, along with the other co-accused, was positively identified by the complainant at the time of the incident, and their names were explicitly mentioned in the FIR with specific roles assigned to each. It is asserted that the applicant was present at the scene of the occurrence and actively participated in the commission of the alleged offence. Furthermore, the investigation has established the applicant's involvement in the crime, and the case has been duly challaned. It is further contended that no evidence has been brought on record to suggest the existence of any enmity between the parties that could have led to the applicant's false implication. On the contrary, the applicant is alleged to have shared a common intention with the principal accused and facilitated the commission of the offence by discharging aerial fire to intimidate and support his co-accused. There is nothing on record to indicate that the complainant or his party had any ulterior motive to falsely implicate the accused in the present case. The learned counsel further submits that a deeper appreciation of evidence at this stage is impermissible, as the matter is yet to be adjudicated upon by the trial Court. Moreover, the applicant is vicariously liable for the commission of the alleged offence, which falls within the prohibitory clause of Section 497 of the Code of Criminal

Procedure. In view of these submissions, the learned counsel prays for the rejection of bail.

6. . Mr. Khalil Ahmed Maitlo, the learned Deputy Prosecutor General, has adopted the arguments advanced by the learned counsel for the complainant. However, he does not refute the fact that there exists an inconsistency in the prosecution's case, as the applicant was allegedly shown to be armed with a gun at the time of the incident, whereas a pistol was subsequently recovered from his possession.

7. Upon a meticulous examination of the record and due consideration of the arguments advanced by the learned counsel for the respective parties, it is manifestly evident that the dispute between the applicant and the complainant party originates from pre-existing animosity, allegedly stemming from an incident of robbery. According to the prosecution's version, the applicant purportedly discharged a firearm (shotgun). However, the weapon recovered from the applicant was a pistol, and the ballistic report establishes that the empty shell matched the said pistol. This inconsistency raises serious doubts about the prosecution's case, as the certainty of the weapon allegedly used in the commission of the offence remains undetermined. The prosecution must establish beyond doubt which weapon was used in the alleged offence, a fact that remains unresolved, thereby necessitating further investigation. Such contradictions undermine the credibility of the prosecution's case and create a significant doubt that must be resolved in favour of the accused at this stage.

8. Significantly, co-accused Ghulam Yaseen and Musadiq have already been granted the concession of pre-arrest bail, while the learned trial Court has also extended post-arrest bail to the said individuals. The doctrine of parity, a well-recognised principle in criminal jurisprudence, is therefore squarely applicable to the case of the present applicant. Furthermore, as no direct or active role has been attributed to the applicant in the commission of the act that resulted in the deceased's death, he has, *prima facie*, made out a case for bail on merits.

9. In light of the foregoing and in reliance upon the legal principles enunciated in the aforementioned precedents, I am of the considered view that the applicant's case falls within the ambit of *further inquiry* as contemplated under Sub-section (2) of Section 497 of the Code of Criminal Procedure. The applicant has remained incarcerated since his arrest, and the trial is yet to reach its conclusion. Given that the investigation in the matter has been completed and the accused is no longer required for custodial interrogation, his continued detention serves no lawful or beneficial purpose. The legal maxim *bail is the rule, jail is the exception* is squarely applicable in the present circumstances, particularly when the case against the applicant falls within the scope of *further inquiry*.

10. In view of the foregoing discussion, I am of the considered opinion that the applicant/accused has successfully established a case warranting the grant of bail. Consequently, the instant bail application stands allowed. Accordingly, the applicant/accused, Kamil, son of Dur Muhammad Koondhar, is admitted to post-arrest bail, subject to his furnishing solvent surety in the sum of Rs. 200,000/- (Rupees Two Lacs) along with a personal recognisance bond in the like amount to the satisfaction of the learned trial Court.

11. Needless to mention here that observation made herein above are tentative in nature and trial Court may not be influenced of the same and decide the case on its own merits as per evidence and the material made available before it.

Bail application stands disposed of in the above terms.

**J U D G E**

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