

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Bail Appln. No.995 of 2024
Criminal Bail Appln. No.15 of 2025

Applicant

Waris Ali s/o Abdul Razzak:
in CrI. B.A. No.S-995/2024

through Mr. Rukhsar Ahmed Junejo,
Advocate.

Applicant

Assadullah alias Abdul Hameed :
in CrI. B.A. No.S-15/2025

through Mr. Muhammad Ali Naper,
Advocate.

The State

: through Syed Sardar Ali Shah Rizvi,
Addl.P.G. Sindh for State.

Complainant,
Javed Ali Abbasi.

: through Mr. Muhammad Ali Dayo,
Advocate.

Date of hearing.

: 07.03.2025

Date of Order.

: 07.03.2025

ORDER

Ali Haider 'Ada', J.

By this common order I propose to dispose of these bail applications bearing No.S-995 of 2024 and CrI. Bail Application No.S-15 of 2025 filed by applicants ***Waris Ali S/o Abdul Razzak and Assadullah alias Abdul Hameed*** under Section 497 Cr.P.C, as both arise out of one Crime and since common question of law as well as facts are involved therefore, same are hereby disposed of conjointly.

The Magistrate upon receipt of the report and having heard the parties as well perusing the material viz. report u/s 173 Cr.P.C, did not concur his opinion with police version. Therefore, by taking cognizance of the offence had joined the accused persons & NBWs were ordered against absconding accused vide his order dated 12.11.2024 which order has been assailed before this Court but same after notice and hearing parties dismissed by this Court vide order dated 07.03.2024.

2. Since, the offences with which accused have been charged are exclusively triable by the Court of Sessions therefore, after taking cognizance of the offence, the Magistrate will submit the case papers to the Court of Sessions after completing legal formalities, in terms of Section 190(2) Cr.P.C, being the Court of ultimate trial. The applicants Asadullah alias Abdul Hameed filed Crl. Bail Application No.2716/2024 while applicant Waris Ali filed bail application No.2650/2024 before the Court of Sessions. Later on both applications were assigned to Additional Sessions Judge-I/MCTC-I, Sukkur after due notice and having heard the parties declined both applications by way of his separate orders dated 12.12.2024 and 23.12.2024. Hence, these applications have been maintained.

3. The facts in nutshell are that complainant Javed Ali Abbasi lodged FIR on 24.02.2024 at Police Station, Bagerji stating therein that he has dispute with accused Asadullah alias Abdul Hameed Kalhoro over landed property and accused persons asked to see him. On 23.02.2024 he alongwith his brothers Saddaruddin aged about 49 years, Qamaruddin and nephew Shafique Ahmed were available at the gate of Scarp Colony Military Road Sukkur, it was about 10:00 p.m. night they saw on the lights fixed on road accused Hamadullah, Samiullah, Asadullah alias Abdul Hameed, Ali Sher alias Guddu and Nasrullah R/o Bashirabad Military Road Sukkur came there on the motorcycle, on coming they stopped their motorcycles and lighted from it and took out pistols from their folds, accused Asadullah alias Abdul Hameed instigated other accused persons not to spare Saddaruddin and commit his murder as he is not settled the dispute with them. On his instigation accused Hamadullah made straight fire upon brother of complainant Saddaruddin with intention to commit his murder which hit on his right ear who raised cries, accused Samillah made straight fire of pistol upon him which hit on back side of head, accused Asadullah alias Abdul Hameed made straight fires of pistol upon Sadaruddin which hit on right side of his shoulder, accused Ali Sher made straight fire upon Saddaruddin which hit on his left side muscle of shoulder, while accused Nasrullah made straight fire upon Saddaruddin which hit on his right side of shoulder who fell down on the ground by raising cries, blood was oozing, they gave the name of 'Almighty Allah' to accused persons they fled away towards Bashirabad side. Complainant party saw saddaruddin who died at spot. They took

dead body to hospital and after funeral right buried and after receiving condolence after three days lodged FIR against accused persons.

4. Learned Counsel for the applicant/accused Asadullah @ Abdul Hameed in CrI. Bail Application No.S-15 of 2025 contended that the investigation was transferred to second I.O, for which second I.O, after collecting CDR as well as recorded the statement of PWs u/s 162 Cr.P.C, excluded the name of present applicant and placed his name in column No.2 and released him on bail but the learned Magistrate did not agree the same; further submits that it is case of two version, in which the complainant in his statement recorded u/s 162 Cr.PC, given double version. Lastly he prays for grant of bail.

5. Learned counsel for applicant Waris Ali Kalhoro in CrI. Bail Application No.S-995 of 2024 contended that applicant Waris was involved on further statement of complainant which was recorded after the lapse of Five month; further submits that CDR collected during investigation and on such CDR the present applicant was involved and even on confessional statement made before I.O, the applicant was implicated, such confessional statement was sent to forensic expert in shape of USB as such practice though falls under inadmissible in evidence and this practice is not allowed in criminal jurisprudence.

6. Conversely, learned Additional Prosecutor General for the State assisted by learned counsel for the complainant submit that the role of the applicants are available with specific allegation as they have direct role upon commission of murder of deceased. He further submits that opinion of the I.O, depends of collecting of CDR as well as some independent witness as even one accused who was nominated through 162 Cr.P.C, statement has confessed his guilt. He also contended that recovery of weapons was also effected from the hands of applicant. He also submits that the accused being involved with the capital punishment cannot be granted bail frequently more particularly when an innocent person has lost his breath.

7. I have heard the learned Counsel for the parties and have examined the material available on record.

8. Admittedly, the name of applicant/accused namely Asadullah @ Abdul Hameed is mentioned in the FIR with specific role of straight fires of pistols upon deceased Sadaruddin with intention to commit his murder which cause his death. So far as the disposal of the case and letting-off of the present applicant is concerned, the opinion of police is not binding upon the Court therefore, this plea carries no weight particularly at bail stage; however, it could be adjudicated upon by the trial Court after recording evidence of the parties; however, the Magistrate has already discarded the same and took cognizance and joined the applicant in the trial. The plea of his letting-off is to be adjudicated and thrashed out at the time of trial. The offence with which he stands charged carries capital punishment and the investigation whatever was conducted in favour of the accused is concerned, same has not been acceded to by the concerned Magistrate. So far the contentions raised by Mr. Naper is concerned, it tantamount to deeper appreciation of evidence which is not permissible at bail stage. Hence, the bail application filed by the applicant Assadullah alias Abdul Hameed being devoid of its merits is hereby dismissed.

9. As far as case of case of applicant Waris Ali is concerned, on 08.09.2022 the complainant alongwith other witnesses have recorded their statements in which they have stated that applicant Waris Ali alongwith other-accused namely Nadeem are the real culprits of the incident while the complainant moved an application u/s 22-A(6)(iii) Cr.P.C, before learned Justice of Peace and in para-10 of said application is very much essential which is being re-produced as under;

“That the Investigation Officer namely Abdul Qudoos Kalwar unnecessary recorded the further statement of the complainant, just for damage the case of applicant and its benefit should be given to the accused. The Investigation Officer provided the shelter to arrested accused and other absconding nominated accused, when on 25.06.2019 the deceased namely Sadaruddin himself moved an application to the Senior Superintendent of Police Sukkur and said that threatened by murder and if I am killed, the nominated accused namely Asadullah, Hafeezullah will be responsible for it.

The complainant disown his further statement as narrated that the second I.O, has recorded their further statement just to damage the case as such further statement is also recorded after a lapse of five months which is not plausibly explained. The CDR is not a conclusive piece of evidence to certain the guilt or

otherwise of an accused. Reliance is placed upon the case of Naveed Sattar v. The State and others (2024 SCMR 205). The question of the property is concerned, regarding weapon as with no direct evidence is available, then case of applicant requires further inquiry. Reliance is placed upon the case of Bahadur v. The State & another (SBLR 2025 Sindh 193). In case of Lal Marjan and another v. Islam Gul and other (2021 SCMR 301), the bail was granted as accused were nominated on the basis of supplementary evidence which was recorded more than a week after the incident. The case against applicant/accused Waris Ali requires further inquiry. Consequently, the bail application bearing No.S-995 of 2024 is hereby allowed. Resultantly, the applicant/accused Waris Ali is admitted to bail subject to furnishing solvent surety in the sum of Rs.500,000/- (Rupees Five lacs) and PR bond in the like amount to the satisfaction of learned trial Court.

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

11. Both bail applications stand disposed of in the above terms.

JUDGE

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