

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2856 of 2024

Applicant : Muhammad Moosa son of Moj Ali
through Mr. Irshad Ali Shar, Advocate & Mr.
Afaq Ahmed and Mr. Rehan Qadeer, Advocate

Complainant : Mst. Khadija
through Mr. Dur Muhammad Mallah,
Advocate

Respondent : The State
through Ms. Rahat Ahsan, Addl. P.G.

Date of hearing : 03.03.2025

Date of order : 03.03.2025

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicant/accused seeks pre-arrest bail in Crime No.832/2024 for the offence under Sections 302, 34 PPC registered at PS SSHIA, after his bail plea has been declined by the learned Additional Sessions Judge-I/(MCTC), Malir, Karachi vide order dated 04.12.2024.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Mr. Irshad Ali Shar, Advocate files Vakalatnama on behalf of the applicant, which is taken on record. He has argued that the applicant is innocent and has falsely been implicated in this case; that in fact, he is the complainant of Crime No.832/2024 but subsequently, after registration of the FIR, the statement of mother of deceased namely Khadija was recorded, who implicated the present applicant; that there is no role assigned against the applicant; that it is yet to be determined whether the applicant has shared common intention when evidence will be recorded; that the applicant has joined the investigation and he is no more required for further investigation. Lastly, he prays for confirmation of bail to the applicant.

4. On the other hand, learned Addl. P.G. as well as learned counsel for the complainant has vehemently opposed for grant of bail and stated that there is no specific role assigned against the applicant by the mother of deceased.

5. Heard the parties and perused the material available on record.

6. From perusal of record, it reflects that on the day of incident, the complainant came out from his house after hearing commotion and saw that Younus, Raju, Aslam and Saleem were fighting with each other and the complainant tried to settle them but a shot was fired which hit Younus; thereafter on the way to hospital, he was expired. During course of investigation, statement of mother of deceased Younus was recorded in which she implicated the present applicant, whereas, the I.O. has opined that the deceased Nasrullah has fired upon the deceased Younus and resultantly, Younus also fired upon Nasruallah, as such in exchange of fires, both of them have lost their life. In the case of ***Mumtaz Hussain and 5 others v. The State (1996 SCMR 1125)***, wherein the bail was granted to the accused on the ground that despite being allegedly armed with deadly weapons like rifle, gun and hatchet only caused simple injuries to some of the prosecution witnesses using the wrong side of their weapons. The question whether the accused in such a situation shared their common intention with the co-accused who had caused the death of the deceased needed further enquiry. In the instant case no role has been assigned against the applicant/accused and only mere presence is shown at the place of incident and it is yet to be seen when the evidence will be recorded whether he has shared his common intention or not. At bail stage only tentative assessment is to be made. Learned counsel for the applicant also pleaded malafide on the part of complainant.

7. In view of the above, learned counsel for the applicant has made out case for grant of bail in terms of subsection 2 of section 497 Cr.P.C. Resultantly, the instant bail application is **allowed**. The interim pre-arrest bail granted to the applicant/accused vide order dated 05.12.2024 is hereby confirmed on same terms and conditions. The Applicant is directed to attend the trial. However, it is made clear that if the applicant/accused misuses the concession

of bail, learned trial Court would be at liberty to take appropriate action.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicant/accused on merits.

JUDGE

Kamran/PA