

**THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA**

**1<sup>st</sup> Criminal Bail No.S-294 of 2023**

Applicant: Bajhi son of Daith Kamalani Jatoi through Mr. Shahabaz Ali M. Brohi, Advocate.

The State: Through Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh.

Date of hearing: 24.08.2023

Date of Order: 24.08.2023

**ORDER**

**SHAMSUDDIN ABBASI, J.-** Through captioned bail application, applicant Bajhi Jatoi seeks post arrest bail in the case emanating from F.I.R No.03/2023, registered at Police Station Rustam for offence punishable under Sections 302, 114, 148, 149 P.P.C. after his bail plea was declined by the learned 4<sup>th</sup> Additional Sessions Judge, Shikarpur vide Order dated 27.05.2023.

2. The brief facts of the case are that on the instigation of applicant, co-accused Sojhro caused fire shot from his Kalashnikov (K.K) on the deceased Raham Ali, which hit on his chest. The motive behind the incident is murderous enmity between the parties.

3. Learned counsel for the applicant has mainly contended the applicant/accused is innocent and he has been falsely implicated in this case by the complainant with malafide intention and ulterior motives; that in all twelve (12) accused were nominated in the F.I.R. by the complainant whereas specific role of causing firearm injury has been assigned to only co-accused Sojhro. He further submitted that case of the applicant/accused requires further enquiry under section 497

Cr.P.C. and he finally prayed for grant of bail to the applicant/accused.

4. Conversely, learned Deputy Prosecutor General appearing for the State has opposed the grant of bail to the applicant/accused on the ground that the applicant/accused is nominated in the F.I.R. and alleged offence is heinous one, therefore, he is not entitled to the concession of bail.

5. Heard learned counsel for the applicant, learned Deputy Prosecutor General and perused the material available on record. Admittedly, there is delay of two months and thirteen days in lodgment of the F.I.R. without plausible explanation by the complainant and it cannot be ruled out that on the ground of enmity the F.I.R. has been lodged after due deliberation and consultation. Complainant has nominated 12 accused in the case and specific role of causing firearm injury has been assigned to co-accused Sojhro, whereas role of instigation has been assigned to the present applicant. No overt act has been assigned to the applicant. The applicant was arrested on 06.02.2023 and no incriminating material has been recovered from the possession of applicant/accused, which connect the applicant with commission of offence. Case has been challaned and the applicant is no more required for further enquiry. Learned counsel for the applicant has pointed out that the complainant party is not attending the trial Court and the applicant is behind the bars without any progress in the trial. In my humble view mere presence without using weapon requires further enquiry under section 497 Cr.P.C. Reliance in this respect is placed on case of Jahanzeb and others v/s. The State (2021 SCMR 63).

6. In view of the foregoing reasons and discussion, I am of the considered view that the applicant has successfully made out his case for grant of bail. Accordingly, the instant bail application is allowed. Applicant Bajhi is admitted to bail subject to his furnishing a solvent surety in the sum of Rs.300,000/-

(*Rupees Three Hundred Thousands only*) and P.R bond in the like amount to the satisfaction of the learned trial Court.

7. 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 either party at trial.

**Judge**

Manzoor