

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA

Cr. Bail Appln. No. S-464 of 2024
Cr. Bail Appln. No. S-515 of 2024

Applicant	Mashooq son of Abdul Rehman Sabhayo, Through Mr. Riaz Ahmed Soomro, advocate
The State	Mr. Aitbar Ali Bullo, D.P.G for the State
Date of hearing:	10-12-2024
Date of Order:	10-12-2024

SHAMSUDDIN ABBASI, J.- Through instant criminal bail application No. S-464/2024, the applicant/accused Mashooque s/o Abdul Rehman Sabhayo seeks post-arrest bail in Crime No. 124/2023, registered at Police Station Garhi Yasin, for the offence U/S 302, 148, 149, 337-H(2) P.P.C, after rejection of his bail plea by the learned trial court vide order dated 19.07.2024 and bail plea was also declined by the trial court in the case of recovery of crime weapon.

2. The facts of the prosecution case are that on 04.12.2023, the complainant along with her cousin Chand Bibi, her son Ali Shah, nephew Muhammad Aasim her brother Zaheer Ahmed, Muhammad Aasim and Ali Shad proceeded to Shikapur on two motor cycles, at about 1230 hours of noontime, when they reached near Shafqat Petrol Pump on Garhi Yasin Bypass road, 10 persons on 04 motorcycles intercepted them, to whom she identified to be 1) Shahbaz armed with Kalashnikov, 2) Meer Bar armed with Kalashnikov, both sons of Shahzad, 3) Wasayo alias Qutub armed with pistol, 4) Piyaro armed with pistol, both sons of Budhal alias Beero alias Karam, 5) Muhammad Saleh son of Angan armed with pistol. 6) Baharo alias Muhammad son of Ameero, armed with pistol, 7) Siraj son of Gulelo armed with pistol, 8) Ali Nangar son of Obhayo armed with pistol, all by caste Marfani, residents of Village Khand Marfani, Taluka Garhi Yasin, 9) two unidentified persons with open faces, whom she has seen very clearly and would identify them on

seeing again, who on reaching near them and accused Shahbaz fired with his Kalashnikov on Muhammad Aasim on his head; accused Meer Baz fired with his Kalashnikov on Ali Shad which hit him on his mouth and both of them fell down from their motorcycle; then accused Wasayo fired with his pistol on Muhammad Asim, which hit on right side of his temporal region; accused Piyaro fired at Muhammad Aasim, which hit him on his back near left side ribs, accused Nangar fired with his pistol at Muhammad Asim, which hit him at the elbow-joint of right arm; accused Baharo fired with his pistol at Muhammad Aasim, which hit him at his left forearm and elbow-joint, then one of the unidentified accused fired two shots of his pistol at Muhammad Aasim, which hit him at the knee joint of his right side leg; another unidentified accused also made two pistol shots at Muhammad Aasim, hitting him on knee joint of his right side leg; accused Muhammad Saleh fired straight with his pistol at Ali Shad, hitting at his right side armpit; accused Siraj fired straight with his pistol at Ali Shad, hitting at his right side iliac region and one of the unidentified accused fired straight with his pistol at Ali Shad, hitting him near the thumb of his right side hand. Seeing them having fallen down, all the accused made aerial firing over the complainant party and fled away. The complainant party saw deceased Muhammad Asim and Ali Shad, who had received many injuries and passed away, thereafter the complainant went to P.S. and lodged the F.I.R. Further statement of complainant was recorded by I.O wherein complainant implicated present applicant and subsequently he was arrested and pistol was recovered from his possession and separate F.I.R No.61/2024 was registered against applicant and case was challaned.

3. Learned counsel for the applicant/accused contends that applicant/accused is innocent and he has been falsely implicated in this case; that applicant has not been nominated in the F.I.R but he was implicated in the present case through supplementary statement recorded by I.O on 05.06.2024 and complainant party has disclosed the name of present applicant as one of the unidentified person; that the case of applicant requires further inquiry on the ground that applicant has been implicated in belated supplementary statement

without any plausible explanation. He has relied upon the case of Akhtar V/s Khawas Khan and another reported in 2024 SCMR 476. He further submits that pistol was foisted by the police at the instance of complainant party in order to strengthen the main case.

4. It is matter of record that complainant appeared on 10.09.2024, 10.10.2024 and 31.10.2024 and sought time to engage counsel of her choice and today she has chosen to remain absent.

5. Learned D.P.G. has opposed for grant of bail on the ground that he has been implicated by the complainant in her supplementary statement and specific role of causing fire arm injury on the left thumb of deceased Ali Shad has been attributed to the applicant/accused; that after his arrest, the crime weapon was recovered which matched with the empties recovered from the place of incident. Alleged offence carries capital punishment, therefore, applicant is not entitled for grant of bail.

6. Heard learned counsel for the applicant, learned Deputy Prosecutor General and perused the material available on the record.

7. Admittedly there is delay of two days in lodging of F.I.R as the alleged incident has been taken place on 04.12.2023, whereas F.I.R was lodged on 06.12.2023. No doubt this is double murder case and the complainant has implicated 10 accused persons out of them eight are nominated and two are unidentified accused with specific role assigned to each accused. The applicant is not nominated in the F.I.R and he has been implicated through further statement recorded by the I.O on 05.06.2024 after delay of about six months of alleged incident and no plausible explanation has been furnished by the complainant for delay in recording further statement.

8. The case of applicant is based on supplementary statement and Hon'ble Supreme Court in a case of Falak Sher @ Shero v/s The State (1995 SCMR 1350) has held that any statement or further statement of the first informant recorded by police would

neither be equated with first information report nor read as part of it and it has been further held that F.I.R is the document, which is entered into book maintained at the Police Station at the police station to bring the law into motion whereby police starts investigation of the case U/S 156 Cr.P.C. Similar view was taken by the Hon'ble Supreme Court in a case of Khalid Javed and another V/S The State (2003 SCMR 1419) as well as in a case of Noor Muhammad versus The State reported in 2008 SCMR 1556. In a case of Muhammad Rafiq and others versus The State reported in 2010 SCMR 385, Hon'ble Supreme Court has held that supplementary statement can be treated as statement U/S 161 Cr.P.C and that can only be used by the accused to contradict the witness and it cannot be used by the prosecution for any other purpose. In background of murderous enmity it can not be ruled out that supplementary statement was made after due consultation and deliberation.

9. Hon'ble Supreme Court in a case of ***NAVEED SATTAR versus The State and others (2024 SCMR 205)***, granted post-arrest bail to accused on the ground that the complainant recorded further statement with the delay of two days and in the present case further statement was recorded after more than five months without any plausible explanation. It is settled proposition of law that implication of accused through further statement requires further inquiry in terms of section 497(2) Cr.P.C.

10. In view of above, it appears that the applicant/accused has made out his case for grant of post-arrest bail, therefore, he is admitted on post-arrest bail subject to furnishing solvent surety in the sum of Rs.300,000/- (Rupees three hundred thousand) and P.R bond in the like amount to the satisfaction of trial court.

11. In Cr. Bail Appln. No. S-515/2024, wherein the bail of applicant was declined by the trial court in the case of recovery of crime weapon. Since the applicant has been admitted on post-arrest bail in main case, therefore, applicant is also admitted on post arrest

bail in Cr. Bail Appln. No. S-515/2024, arising out of Crime No. 61/2024, registered at Police Station Garhi Yasin, for the offence U/S 25 S.A.A, subject to furnishing solvent surety in the sum of Rs.100,000/- and P.R bond in the like amount to the satisfaction of trial court.

12. 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.

J U D G E

Abdul Salam/P.A