

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Crl. Bail Application No.S-357 of 2024

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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- 1. For orders on O/objection at flag-A.
- 2. For hearing of bail application.

Date of hearing **26.08.2024.**

Mr. Abdul Sallam Shaikh, Advocate for
applicant/accused.

Mr. Ferozuddin N. Shaikh, Advocate for complainant.

Mr. Khalil Ahmed Maitlo, D.P.G for State.

ORDER

Through instant bail application, applicant Abdul Ghani son of Qalandar Bux Jalalani seeks Post-arrest bail in Crime No.130/2020 Police Station, Kumb district, Khairpur for offence under Sections 302, 337A(i), 337F(i), 34 114 PPC. Earlier his bail application was declined by learned Additional Sessions Judge-I/(MCTC), Khairpur vide order dated 30.03.2024.

Facts of the case are that complainant Kashif Ali lodged FIR on 22.08.2020 at 1400 hours alleging that there exists dispute over the land situated in deh Jalalani with Haji Abdul Ghani and his father Abdul Kareem alias Manoo on which Abdul Ghani and others were annoyed and used to issue threats that they would cause harm to Abdul Kareem alias Manoo. On 21.08.2020 at morning complainant, his father Abdul Kareem alias Manoo, brothers Sajid Ali and Zahid Ali irrigating water to the land while he was cutting the gross there came accused Abdul Ghani with Iron rod, 2. Shahid with hatchet and on coming present applicant having armed with Iron rod instigated his son Shahid to cause hatchet blow to Abdul Kareem and commit his murder. On his

instigation accused Shahid caused hatchet blow to his father Abdul Kareem alias Manoo on the left side of neck who fell down on the ground while present accused also caused iron rod blow on his head, right hand and other parts of body. They raised cries the persons standing nearby their crop came running while giving hakals and on seeing them both the accused with their weapons fled away towards eastern side. The complainant then went and saw over his father Abdul Kareem who sustained injuries on his left side of neck and blood was oozing and within their sight he died. After completing formalities, complainant appeared at Police Station where he lodged FIR.

Learned counsel for applicant contends that the present applicant though said to be accompany with the main accused the allegations against him are of causing injuries which do not attract the prohibitory clause. Learned counsel further contends that though the accusation of instigation against the present accused is present the same being matter of further inquiry are liable to be so dealt with. Learned counsel further contends that the present applicant is behind bars since his arrest/lodging of the FIR and has *prima facie* served more than the period of sentence that may come-up for the injuries alleged against him.

Learned counsel for the complainant, however, contends that the present applicant is a co-accused who had participated with the main accused wherein heinous crime of murder has taken place and as such liable to be considered accordingly. That the co-accused is liable for the penalty as the specific role of instigating in respect of the main crime is available on record the bail is not liable to be considered. Learned counsel also contends that as per his knowledge one witness is yet to be examined as such matter is liable to be conceded by the trial Court. In

respect of his contentions reliance is made to the case of *Muhammad Nawaz v. The State* (2002 SCMR 1381).

Learned Deputy Prosecutor General present supports the contentions of learned counsel for complainant, however, brought-up the record according to which the allegations against present accused as to the injuries as Shujjah-i-Khafifah is bearing thereof. In respect of rule, the learned DPG relies upon case of *Syed Hamad Raza v. The State and others* (2022 SCMR 602) contending that in the said case also although co-accused had caused Shujjah-i-Khafifah injuries being the co-accused's bail was declined.

Having heard learned counsels and gone through the record. The judicial exercise requires that matters are liable to be considered on merits wherein as anyone witness is left to be examined the matter can be considered accordingly, however, in this regard it may be observed that in case the concession of bail is available the applicant may not be left to the mercy of the trial Court for conclusion of the trial and withholding the concession is not found to be a favourable exercise on account of restraint to the availability of freedom and same is liable to be considered in accordance with law. In the present case where the complainant desires obtaining justice and conclusion on the basis of full length trial, the concession of bail to the applicant as available is not found to be restricted. Accordingly, as the availability of the concession of bail is bearing from the record on account of injury attributed to present applicant not covered by the prohibitory clause and insighted a matter of further inquiry. This bail application is allowed. Let the present applicant be released on bail on submitting solvent surety in the sum of Rs.100,000/- (Rupees One lac) with two sureties and PR bond in the like amount to the satisfaction of trial Court.

Needless to mention here that observations made herein above are tentative in nature and trial Court may not be influenced of the same and decide the case on its merits.

Bail application stands allowed and disposed of in the above terms.

J U D G E

Ihsan/P.S.