

*IN THE HIGH COURT OF SINDH BENCH AT SUKKUR*

***Crl. Bail Application No.S-416 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 **10.10.2024.**

Mr. Israr Ahmed Shah, Advocate for applicant/accused.

Mr. Achar Khan Gabole, Advocate for complainant.

Mr. Imran Mobeen Khan, Asstt.P.G for State.

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**ORDER**

Through instant bail application, applicant Arslan son of Ghulam Fareed seeks Post-arrest bail in Crime No.230/2022 Police Station, Abad district Sukkur for offence under Sections 302, 457, 34 PPC. Earlier his bail application was declined by learned Additional Sessions Judge (Hudood), Sukkur vide order dated 01.08.2023.

Facts of the case are that complainant Nisar Ahmed lodged FIR on 19.12.2022 at 1600 hours alleging that on 13.12.2022 he alongwith his brother Aqeel, friend Manan and relative Aftab Ahmed were sitting at rest house of Abdul Waheed Lakho at about 11:30 pm, all of sudden seven persons duly armed with repeater, gun, pistol and with daggers trespassed into said Otaq, yet identified if brought before, hence due to fear of weapons complainant party remained silent, meanwhile persons having daggers took off the clothes of his brother Aqeel and caused multiple injuries at his different parts of body though daggers till his death in front of complainant and witnesses. Subsequently, the complainant and his witnesses identified the applicants and after completing formalities, complainant appeared at Police Station and lodged FIR.

The contentions of learned counsels were recorded on earlier date and today matter was heard further. Learned counsel for the complainant contended, primarily being that an earlier bail application was filed wherein one month's directions were acquired however, the same has been concealed alongwith the said order and in this regard learned counsel further contends that the proceedings have been managed in a manner whereby despite single council/bail application rejected for three accused only two had come-up before the High Court in the said earlier bail application. The present applicant kept himself awaiting. It is further contended that the specific participation in the murder role of the present applicant carrying the dagger with active activity of is present which was the cause of death as confirmed by the postmortem which supports the version of FIR being the cause of death. Learned counsel also contends that further statement though recorded on 03.03.2023 the identification of the present applicant was made on account of which he was got arrested on 07.03.2024 and on interrogation the said daggers were recovered which after lab examination has come-up with the positive result. It is also contended that the relationship as alleged has not been proved even in the cross-examination. Learned counsel has lastly contended that a tentative assessment is required in the matter in view of the Superior Courts authorities as collected by the I.O, whereas analysis of the evidence is considered to be deeper appreciation. He lastly contends that deeper appreciation prejudice the trial.

Learned Assistant Prosecutor General while adopting the arguments of learned counsel for complainant further contended that delay is no ground for entertainment of bail application and in this regard he relies upon the case reported at 2005 *SCMR 1494*. Learned

Assistant Prosecutor General lastly contends that prosecution witnesses supported the complainant.

In rebuttal, learned counsel for applicant contended that no embargo on legal obligation is available for the parties not to have same counsel or to approach the Courts jointly. Learned counsel has further contended that identification was not properly made.

Having heard learned counsels on the earlier date, progress report from the trial Court was called according to which three PWs await cross examination of the accused. At present primarily the element of further inquiry is liable to touch wherein a depart appreciation of the evidence though present is liable to prejudice the case of the parties, as to the ground of delay the same also is not found attracting on account of the availability and not utilizing the opportunity to approach this Court by the present applicant when his co-accused had approached the Court. Irrespective to the embargo as argued by the learned counsel for the applicant. The trial awaiting cross-examination for conclusion which is apparently not being availed and to the evidence already recorded it is not found feasible to entertain the bail application as presently no substitute ground for further inquiry is found available to the extent of entertaining the bail. The present application is found not tenable and accordingly is dismissed. However, the learned trial Court is directed to attempt conclusion of the trial within a period of one month.

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.

With the above observation bail application stands disposed of.

**J U D G E**

*Ihsan/PS*