

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Crl. Bail Application: No: S: 193 & 325 of. 2023

Applicants : Mst. Dangli @ Shahzadi Khoso, & others V/S The State

SINDH HIGH COURT

Composition of Bench Before Mr. Justice Muhammad Saleem Jessar Single

Dates of Hearing: 20/11/2023

Date of Decided: 20/12/2023

Date of reasons: 27/11/2023

(a) Judgment approved for
Reporting

YES
NO

~~20/11/2023~~

CERTIFICATE

Certified that the judgment / Order is based upon or enunciates a principle of law / decides a question of law which is of first impression / distinguishes/ over-rules/ reverses/ explains a previous decision.

Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used. The Reader must attach it to be the top of the first page Of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is Approved for reporting.

(iv) These directions which are not to be used should be deleted.

IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA

Crl. Bail Appln. No. S- 193 of 2023.

Applicants:
1. Mst. Dangli Shahzadi.
2. Gul Mir,
Through Mr. Abdul Rehman A. Bhutto, Advocate.

(2) Crl. Bail Appln. No. S- 325 of 2023.

Applicant: Raheemo alias Rahim Bux alias Abdul Rahim present in person.

Complainant: Muhammad Raheem, through Mr. Abdul Ghani Bijarani, Advocate.

Respondent: The State, through Mr. Ali Anwar Kandhro, Additional Prosecutor General.

Date of hearing: 20.11.2023.

Date of Order: 20.11.2023.

Date of reasons: 27.11.2023.

ORDER

Muhammad Saleem Jessar, J- This common order would dispose of the captioned two bail applications, as the same are interconnected and arisen out of same case/ crime.

Crl. Bail Appln. No. S- 193 of 2023 has been filed on behalf of applicants Mst. Dangli Shahzadi and Gul Mir, whereas Crl. Bail Appln. No. S- 325 of 2023 has been filed on behalf of applicant Raheemo alias Raheem Bux alias Abdul Raheem, in case registered vide Crime No. 52 of 2022 at P.S Tangwani, for offence punishable under Sections 302 and 34 P.P.C. The applicants approached the trial Court with the same prayer, which have been declined by learned 2nd Additional Sessions Judge, Kandhkot vide two separate Orders dated 06.04.2023, respectively.

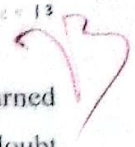
On 07.12.2022 complainant Muhammad Raheem son of Muhammad Murad Khoso set the law into motion by reporting the matter vide F.I.R No. 52 of 2022, to the effect that on 03.12.2022, he along with his brother, namely, Baggan went to house of their brother Tego Khoso to meet him and stayed there for night and on 04.12.2022 in early morning the complainant and his brother Baggan boarded on a motorcycle. while their brother Tego and nephew Shah

Mural boarded on another motorcycle and proceeded for Kamlika area. As such at about 04:00 a.m. they reached near lands of Abdul Hamid Khan on the path of Chhino minor canal, where they noticed on the light of their motorcycles four persons having guns in their hands, standing on the road, they were with open faces, who signaled the complainant party to stop and while aiming their weapons asked them to be silent and led them into lands, to which Baggan (complainant's brother) offered resistance to the accused persons, as such one of the culprits fired gun shot at Baggan which hit on back of his neck and he fell down by raising cries; started bleeding and died on the spot. Then, the accused persons stood over complainant party for sometime by aiming weapons upon them and then left the scene of offence. Ultimately, the complainant party brought dead body to police station and after conduct of autopsy of dead body and its burial the complainant again went to police station and lodged report to the above effect.

Heard learned counsel for the applicants, learned Addl. P.G. appearing for the State, as also learned Advocate for complainant and gone through the material made available on record.

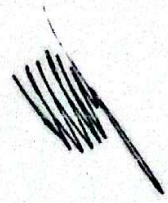
Learned counsel for the applicants mainly contended that F.I.R. is delayed for about more than three days; that names of the applicants do not appear in the F.I.R., but they were involved in the case on the basis of 164 Cr.P.C. statements recorded by two of the witnesses; per learned counsel as per 164 Cr.P.C. statement no active role is assigned to applicants Raheem and even presence of applicant Mst. Dangli Shahzadi is not shown on the spot, but she has been assigned role of abetment. Per learned counsel, the case of applicant in view of above circumstances calls for further enquiry. He prayed for confirmation of interim pre arrest bail already granted to applicants/ accused.

Conversely, learned Addl. P.G. assisted by learned Advocate for complainant opposed the bail application on the grounds that, no malafides are urged on the part of complainant and or prosecution; that the applicants have been implicated in the F.I.R. by eyewitnesses in their statements recorded in terms of Section 164 Cr.P.C.; that ocular version is fully supported by medical evidence, and that the offence with which the applicants are charged is heinous one, and falls within prohibitory clause of Section 497 Cr.P.C.



I have given due consideration to the submissions made by the learned counsel for parties and perused the record. Perusal of record shows that, no doubt names of the applicants are not mentioned the F.I.R, but they have been named by eyewitnesses Tego and Shah Murad in their statements recorded before the Magistrate under Section 164 Cr.P.C. Per statement of PW Shah Murad applicant Gul Mir is assigned specific role of making fire upon deceased, whereas presence of applicant Raheemo alias Raheem Bux has been shown on the spot. While, PW Tego has also shown presence of applicants Gul Mir and Raheemo alias Raheem Bux. The ocular version is also gets support from medical evidence. It is well settled principle of law that, concept of pre arrest bail is exceptional and it has to be exercised sparingly and carefully; the purpose behind it, is to save innocent persons from false allegations, trumped up charges and malicious prosecution at the end of complainant party. It is also settled law that, concession of pre-arrest bail could not be allowed to an accused person unless the Court felt satisfied about seriousness of the accused's assertion regarding his intended arrest being actuated by mala fide on the part of the complainant party or the local police. But, herein this case, there appears no malice or malafides on the part of complainant to falsely implicate the applicants in the commission of alleged offence. In view of above circumstances, the applicants Gul Mir and Raheemo alias Raheem Bux do not appear to be entitled to concession of extra ordinary relief of pre arrest bail. As the basic ingredients for grant of bail as has been enshrined by Apex Court in case of Rana Muhammad Arshad v. Rafique Ahmed and others reported in PLD 2009 S.C 427 are lacking in the case.

However, the case of applicant Mst. Dangli Shahzadi is on different and lower footings than the case of applicants Gul Mir and Raheemo alias Raheem Bux. Although, her name has been taken in statement under Section 164 Cr.P.C of the two prosecution witnesses, but her presence on the spot has not been shown; she has not been alleged to have caused any injury to deceased; the only allegation against applicant Mst. Dangli Shahzadi is that of abettor and conspirator; the place of abetment has also not been mentioned in the statements of witnesses. It is well settled law that, case of conspirator is always at a lower footings and allegations of conspiracy can easily be set up between inimical parties and in such circumstances the bail should be granted. The reliance in this regard can be made to case reported in 2002 P.Cr.L.J-400 and SBLR 2008 Sindh-146.



Accordingly, these bail applications were disposed of vide short order dated 20.11.2023, whereby interim pre arrest bail granted to applicant Gul Mir and Raheemo alias Raheem Bux was recalled and they were taken into custody and remanded to jail; whereas interim pre arrest bail already granted to applicant Mst. Dangli Shahzadi was confirmed on same terms and conditions; and these are the reasons for the same.

It is however, made clear that, the observations hereinabove are tentative in nature and shall not prejudice the case of either party in the trial.

Judge

Ansari