

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Ist. Crl. Bail Appln. No.S-345 of 2023.

Ist. Crl. Bail Appln. No.S-356 of 2023.

Ist. Crl. Bail Appln. No.S-367 of 2023.

Cr. Bail Appln. No.S-438 of 2023..

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For orders on office objection 'A'.
2. For hearing of bail application.

**29.02.2024**

Mr. Irshad Ali R. Chandio, advocate along with applicants Rafique Ahmed and Suhail in Crl. Bail Appln. No.S-345 of 2023, Kareem Bux, Rashid Ali, Arif Ali, Ghulam Murtaza & Ghulam Hyder in Crl. Bail Appln. No.S-356 of 2023, Imam Bux and Ghulam Ali @ Nadir in Crl. Bail Appln. No.S-367 of 2023 (on bail). Whereas, applicant Rahib Hussain Buriro is also represented by Mr. Irshad Ali R. Chandio, advocate, who is in custody.

Mr. Safdar Ali Ghouri, advocate along with complainant.

Mr. Ali Anwar Kandhro, Addl. P. G.

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For the reasons to be recorded later on, Crl. Bail Appln. No.S-345 of 2023, to the extent of applicant Rafique Ahmed son of Akram is hereby dismissed and ad-interim bail granted to him vide order dated 23.06.2023 is hereby recalled. Consequently, bail bond executed by him is also hereby cancelled. Since specific role of causing hatchet injury to deceased on his head, has been assigned to him, which has been declared by the Medico Legal Officer to be fatal for the life of deceased. Hence, applicant Rafique Ahmed is present on bail, he is taken into custody and remanded to Central Prison Larkana with directions to jail authorities to produce him before the trial Court/Additional Sessions Judge-VI, Larkana, on 07<sup>th</sup> March 2024 without fail. While ad-interim bail granted to remaining

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applicants/accused are allowed and confirmed on the same terms and conditions.

Bail Application No.S-438 of 2023, filed by applicant Rahib Hussain is hereby allowed. Accordingly, applicant Rahib Hussain son of Imdad Buriro shall be released on bail subject to his furnishing solvent surety in the sum of Rs.200,000/- and P.R bond in the like amount to the satisfaction of trial Court.

Judge

M.Y.Panhwar/\*\*

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Mr. Safdar Ali Ghouri, advocate along with complainant.

Mr. Ali Anwar Kandhro, Addl. P. G.

**ORDER**

**MUHAMMAD SALEEM JESSAR, J.-** Applicants, Rafique Ahmed and Suhail in CrI. Bail Appln. No.S-345 of 2023, Kareem Bux, Rashid Ali, Arif Ali, Ghulam Murtaza & Ghulam Hyder in CrI. Bail Appln. No.S-356 of 2023, Imam Bux and Ghulam Ali @ Nadir in CrI. Bail Appln. No.S-367 of 2023, seek pre-arrest bail, whereas, applicant Rahib Hussain Buriro, seeks post arrest bail, in Crime No.19 of 2022 registered with Police Station Gerello, for offence punishable under Sections 302, 337-A(i), 337-F(i), 337-A(vi), 506/2, 504, 147, 148, 149, PPC. Earlier, the bail before arrest application of applicants Rafique Ahmed, Suhail, Kareem Bux, Rashid Ali, Arif Ali, Ghulam Murtaza, Ghulam Hyder, Imam Bux and Ghulam Ali @ Nadir, whereas the applicant for post arrest bail of applicant Rahib Hussain was rejected



by learned Additional Sessions Judge-IV, Larkana, vide orders dated 20.06.2022 & 03.08.2023 respectively.

2. Mr. Irshad Ali R. Chandio, learned counsel for the applicants, submitted that the alleged incident had occurred on 24.08.2022, at 12:30 noon and the FIR thereof was lodged with the delay of about a month i.e. on 20.09.2022, at 09:30 p.m. He further submitted that in fact complainant party had attacked upon the applicants/accused side, wherein applicant Rafique Ahmed Buriro and others had sustained injuries, for which counter FIR bearing No.20/2022 was lodged on 24.08.2022, at 12 noon, much prior to the present FIR; hence, submitted that after causing injuries to the applicants' side, the complainant party in order to save their skin got registered instant FIR; however, he could not controvert the fact that the FIR was lodged by the complainant on 20.09.2022, whereas, they have got registered FIR on 22.09.2022 upon the orders of the Court. He further submitted that though the applicants are nominated in the FIR with weapons and specific role(s), yet they had no intention to commit murder of deceased and the injuries allegedly sustained by the deceased were not so serious, which could result in his death. In this context, he submitted that deceased Ali Anwar was granted interim pre-arrest bail by the Court below on 23.09.2022 (Annexure-F, page-4) vide Crl. Bail Appln. No.345 of 2023 and same was confirmed on 29.09.2022; however, he died on 19.05.2023 due to 'Malaria'. In support of his contention, he placed on record a photo-stat copy of Malaria report of deceased dated 15.04.2023. He; therefore, submitted that the applicants had not caused murder of the deceased, therefore, case against them in view of counter-case requires further enquiry and prayed for their admission to pre-arrest as well as post arrest bail. In support of his contentions, he placed his reliance upon the unreported

case of Ghulam Akbar and others v. The State in Crl. Bail Appln. No.S-511 of 2023.

3. Mr. Ali Anwar Kandhro, learned Addl. P.G., appearing for the State, opposed the bail applications, except applicants Kareem Bux, Ghulam Ali @ Nadir & Ghulam Hyder, who have not been assigned any specific role.

4. Mr. Safdar Ali Ghouri, learned advocate for the complainant opposed the bail applications on the grounds that accused/applicant Rafique Ahmed Buriro caused hatchet blow to deceased Ali Anwar at his head and said injury has been declared by the Medico-legal Officer as *Shajjah-i-hashimah*, falling under section 337-A(iii), PPC, carrying maximum punishment of ten years; however, accused Rafique himself had moved application to Medical Superintendent for constitution of Special Medical Board (Page-51), which ultimately was constituted and the Board after examination of injured Ali Anwar, who later on died, modified nature of injury and declared said injury as *Shajjah-i-Damighah*, falling under Section 337-A(vi), PPC, which entails punishment of fourteen years. Accused Rahib allegedly caused Danda blows to deceased Ali Anwar at his face and eyes, those injuries have been declared as *Shajjah-i-Khafifah*, falling under section 337-A(i), PPC, yet the intention of the accused by causing blows to deceased at his face was brutal. As far as accused Suhail is concerned, he was shown armed with Pistol and had allegedly caused butt blows to deceased Ali Anwar at his nose and said injury has also been declared to be punishable under section 337-A(i), PPC. Accused Rashid allegedly caused Danda blow to injured/PW Muhsin on his head and accused Arif allegedly caused lathi blow to injured Muhsin at his right arm as well as hand and injuries allegedly



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attributed to applicants Rashid and Arif have been declared to be punishable under section 337-A(i) and F-(i), PPC. Accused Ghulam Murtaza allegedly caused lathi injury to PW Qadeer on his right shoulder and left foot. Both injuries sustained by the injured/PW Qadeer have been declared to be punishable under section 337-F(i), PPC. Accused Imam Bux allegedly caused Danda blow to injured PW Abdul Manan and injury sustained by Abdul Manan has also been declared under section 337-F(i), PPC; hence, Mr. Ghouri submitted that it was daylight incident and the parties being known to each other, there does not arise any question of mistaken identity or false implication. He further submitted that all the accused having conjointly participated by forming unlawful assembly are vicariously liable to be prosecuted; hence, are not entitled for the bail. As far as contention raised by learned counsel for the applicants that deceased Ali Anwar had died due to "Malaria" is concerned, Mr. Ghouri drawn attention of the Court towards postmortem notes (available at page-59) and opinion (at page-63), wherein, the Medico Legal Officer who conducted autopsy has specifically mentioned that deceased Ali Anwar died due to injury sustained by him on his head (attributed to applicant Rafique Ahmed). He; therefore, submitted that prosecution witnesses are natural witnesses and their presence has not been denied as almost all had sustained injuries on their person at the hands of the accused/applicants. As far as counter-case is concerned, he submitted that injuries sustained by the other side were not so serious nor anybody from their side died and such their version, which was taken at belated stage, is yet to be determined by the trial Court after recording evidence. In support of his contentions, he placed his reliance upon the cases of *NASIR MUHAMMAD WASSAN and another v. THE STATE (1992 SCMR 501)*, *ARIF DIN v. AMIL KHAN and another*

(2005 SCMR 1402), *Syed MAQBOOL MUHAMMAD v. THE STATE* (2005 SCMR 635), *ALI NAWAZ v. THE STATE* (2008 YLR 2957), *MUKHTAR AHMAD v. The STATE and others* (2016 SCMR 2064), *SOHAIL WAQAR alias SOHAILA v. The STATE and others* (2017 SCMR 325) and *GULZAR AHMED alias BIRJO v. The STATE* (2017 MLD 829).

5. I have heard learned counsel for the applicants, learned counsel for the complainant as well as learned Addl. P.G appearing for the State and have perused the material available on record.

6. Since the injuries caused by applicant Rafique Ahmed to deceased Ali Anwar has been proved fatal, which resulted in his death and same also gets support from the postmortem report of deceased, therefore, Crl. Bail Appln. No.S-345 of 2023 to the extent of applicant Rafique Ahmed son of Akram is hereby dismissed. It is informed to the Court that case has been challaned which is now pending trial before the Court of Additional Sessions Judge-VI, Larkana, where charge against accused has been framed, therefore, applicant/accused Rafique Ahmed was taken into custody and remanded to jail by short order dated 29.02.2024, with direction to the jail authorities to produce him before trial Court on 7<sup>th</sup> March 2023 when the case was said to be fixed. Whereas, injuries allegedly attributed to all other accused/applicants are either bailable or the punishment thereof does not fall within the prohibitory clause of Section 497, Cr.P.C, hence their case requires further enquiry as contemplated under sub-section (2) to Section 497, Cr.P.C.

7. Consequently, excepting applicant Rafique Ahmed, these bail applications to the extent of all other applicants are hereby allowed. Resultantly, interim pre-arrest bail granted to applicants Suhail son of Ameer Bux in Crl. Bail Appln. No.S-345 of 2023 vide

order dated 23.06.2023 is confirmed on the same terms and conditions; whereas, bail application to the extent of applicant Rafique Ahmed is dismissed and ad-interim granted to him through same order is hereby recalled. Further, ad-interim pre-arrest bail granted to applicants Imam Bux son of Bahadur Ali & Ghulam Ali @ Nadir in Crl.Bail Appln. No.S-367 of 2023 vide order dated 07.07.2023, applicants Kareem Bux son of Bahadur Ali, Rashid Ali son of Imam Bux, Arif Ali son of Khush Muhammad, Ghulam Murtaza and Ghulam Hyder vide order dated 03.07.2023 is hereby confirmed on the same terms and conditions. Likewise, applicant Rahib Hussain son of Imdad Buriro is directed to be released on bail subject to his furnishing solvent surety in the sum of Rs.200,000/- and P.R Bond in the like amount to the satisfaction of trial Court.

8. Above are the reasons of short order dated 29.02.2024.
9. All these bail applications stand disposed of in the above terms.

  
Judge

M.Y.Panhwar/\*\*