

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
Cr. Bail A. No. S-486 of 2016

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Date

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Order with signature of Judge

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For hearing of bail application

13.06.2018

Mr. Abdul Sattar Soomro Advocate for applicant  
Mr. Imdad Ali Malik Advocate for complainant  
Mr. Sardar Ali Shah Rizvi DPG

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**Adnan Iqbal Chaudhry J.** -This bail application post arrest was dismissed by a short order on 11-06-2018. The reasons for the dismissal follow.

1. On 13-01-2015, the applicant-accused namely Wahid Bux alias Wahidoo along with 4 others was nominated in Crime No.02/2015 at P.S. Tamachani, District Sukkur, under Sections 302 (*qatl-i-amd*), 452 (house-trespass for hurt etc.), 114 (abetment), 504 (intentional insult to provoke breach of peace), and 337-H(2) (rash or negligent act) of the P.P.C., the said offences/acts having allegedly been committed on 11-01-2015 at 01:30 p.m. in the presence of the complainant and 2 others, resulting in the death of Fateh Muhammad alias Fatooh (the deceased victim). The complainant Khadim Hussain was the brother of the deceased victim. The complainant is said to have passed away recently.

2. The FIR alleges that Wahid Bux (the applicant-accused) and 3 of the co-accused armed with T.T. pistols fired upon the deceased; that the fire of Wahid Bux hit the deceased on the upper side of the male organ; the fire of Hazoor Bux hit the left

shoulder; the fire of Sikander hit the head; and the fire of Dildar hit the left breast.

The applicant-accused is said to have been arrested on 27-02-2015 and is in custody since. The other 4 co-accused are absconders. The bail application of Wahid Bux was dismissed by the 1<sup>st</sup> Additional Sessions Judge, Sukkur vide order dated 22-03-2016; hence this bail application.

3. Mr. Abdul Sattar Soomro, learned counsel for Wahid Bux (applicant-accused) argued that the absence of the mention of a motive in the FIR makes the allegation unbelievable; that the fire/injury attributed to Wahid Bux is said to be to the upper side of the male organ which is not to a vital part of the body and cannot be said to be the cause of death. He further submitted that the co-accused Hazoor Bux who is alleged to have fired at the shoulder, and the instigating co-accused Hadi Bux, had been declared innocent by the Police during investigation by placing them in column 2 of the Challan, although the Magistrate did take cognizance against them, but per Mr. Soomro, the fact that they were declared innocent by the Police fortifies the case of Wahid Bux. He therefore contended that the case is one of further inquiry. The case law cited by Mr. Soomro is discussed below.

4. Mr. Imdad Ali Malik, learned counsel who had been representing the complainant before the latter passed away, had on the last date undertaken to file vakalatnama for the legal heirs of the deceased victim. Though such vakalatnama was not on record, I allowed him to assist the Court. He opposed the bail by submitting that a specific role had been assigned to Wahid Bux in the FIR; that where death was caused by collective injury, it is irrelevant which fire/injury had hit the vital part of the body; and that the statements of the eye-witnesses recorded under Section 161 Cr.PC fully support the FIR.

5. Mr. Sardar Ali Shah, learned DPG also opposed the bail and to repel the submissions made by Mr. Soomro he (Mr. Shah) relied upon the cases of *Shahzaman v. The State* (PLD 1994 SC 65) and *Muhammad Arshad v. The State* (PLD 2011 SC 350) which are discussed *infra*.

6. The thrust of Mr. Soomro's arguments was on the contention that the fire/injury attributed to Wahid Bux was not to a vital part of the body and thus cannot be said to be the cause of death, thereby constituting a sufficient ground for further inquiry into the guilt of the applicant-accused. Mr. Soomro did not point to any material to show that the part of the body where Wahid Bux is said to have caused fire/injury is not a vital part of the body, injury to which cannot cause death. An excerpt from the post-mortem report reproduced in the bail application reads that the cause of death is cardiopulmonary injury due to shock and haemorrhage and damage of vital organ. It is this excerpt that is relied upon by Mr. Soomro to support his contention. In my view, such reliance is misconceived as such excerpt can well be read against Wahid Bux. But that is a matter of deeper appreciation of evidence, not possible nor desirable at this stage. For the present purposes, suffice it to observe that Mr. Soomro's case on the ground that a fatal injury is not attributed to the applicant-accused is set at naught by the case of *Shahzaman v. The State* (PLD 1994 SC 65) in which it was held by the Hon'ble Supreme Court that "*when armed assailants attacked an unarmed victim, the of omission to pin-point in FIR as to which assailant was armed with what weapon and who caused the fatal injury, would not make any material difference so far as conviction on the basis of charge under Section 302 PPC is concerned, except on question of sentence if trial court believes evidence produced by the prosecution. Section 34 PPC envisages that if a criminal act is done by several persons in furtherance of common intention, each of such persons would be liable for that act in the same manner as if it were done by him alone.*"

The reliance placed by Mr. Soomro on the cases of *Ahsan v. The State* (2012 MLD 723) and *Khan Zada v. The State* (2012 PCr.LJ 1883) is misplaced. In the first case, though the accused was alleged to be present and armed at the scene, no overt act was attributed to him. The second case is for the proposition that where injury is caused to a non-vital part of the body or is not dangerous, then bail is ordinarily granted. But that was a case of attempted *qatl-e-amd* under section 324 PPC and is thus completely distinguishable. Also cited was the case of Gaji alias Dado v. The State (2012 MLD 1298) but the proposition discussed therein is clinched by the case of *Shahzaman v. The State supra*.

7. As regards Mr. Soomro's contention that some of the co-accused had been declared to be innocent by the Police during investigation, thus making it a case of further inquiry, suffice it to say that admittedly the same was not done in respect of Wahid Bux, and in any case the learned Magistrate had refuted such opinion of the Police by joining the said co-accused. Having said that, from the case of *Muhammad Arshad v. The State* (PLD 2011 SC 350) it seems to be settled that while acting as an investigating agency the Police has no role nor authority to opine on the innocence or guilt of an accused and that such statements made by the Police in the challan are to be ignored by the Court while deciding the case.

8. As regards Mr. Soomro's contention that the FIR does not allege the motive for committing the alleged offences, I do not see how lack of such information, even if it can be called that, helps the case of Wahid Bux when the occurrence does not seem to be denied.

9. A specific role has been assigned to Wahid Bux in the FIR. The bail rejection order of the 1<sup>st</sup> Additional Sessions Judge, Sukkur, records that the eye witnesses in their statements under Section 161 Cr.PC have supported the version narrated in the

FIR; that the crime weapon had been recovered; that the ocular evidence is supported by medical evidence.

10. Based on the record so far and submissions made by learned counsels it cannot be said that there are no reasonable grounds to believe that the applicant-accused is not guilty of alleged offences. The case against the applicant-accused also falls within the prohibitory clause of Section 497 Cr.PC. For this reason, and for reasons discussed in paras 6 to 9 above, **bail is denied** and this criminal bail application is dismissed. Needless to state that the observations made herein are tentative and are not to be used to prejudice or advance the case of any party at trial.

JUDGE

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
Cr. Bail A. No. S-316 of 2018

Date

Order with signature of Judge

For orders on office objection  
For hearing of bail application

12.06.2018

Mr. Imdad Ali Malik Advocate for applicants  
Mr. Sardar Ali Shah Rizvi DPG a/w complainant Allah  
Rakhio and witness Muhbat

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ADNAN IQBAL CHAUDHRY J:- The applicants have been nominated in Crime No.66/2018 for the offence u/s 365-B, 452, 34 PPC i.e for kidnapping a woman to compel her to marry and house trespass with common intention with other co-accused namely Attaullah and Fida Hussain, both sons of Nisar Ahmed.

The FIR was lodged on 17.4.2018 at PS Kot Dijji. The applicants/accused are said to have been arrested on 24.4.2018. The post arrest bail application of the applicants/accused was rejected by the Court of Sessions Khairpur vide order dated 8.5.2018; hence this bail application.

The complainant alleges that the applicants/accused along with other co-accused Attaullah and Fida Hussain entered the house of the complainant on 11.4.2018 and kidnapped his daughter whose name has been mentioned in the FIR as Mst. Pari; that Mst. Pari aged about 27/28 years was already married to one Arbab son of Dost Muhammad; thus the kidnapping was for committing zina. On the other

hand, it is the case of applicants/accused essentially that the story narrated in the FIR is fabricated; that the actual facts are that Mst. Pari whose real name is Mst. Parveen, had in fact gone off with the co-accused Attaullah son of Nisar Ahmed and married him of her own free will; that the applicants are relatives of Attaullah and have been involved / implicated only to get back at Attaullah.

Heard learned counsel. The case of the applicants/accused is supported by the copy of C.P No. S-985/2018 filed by Mst. Parveen @ Pari and her husband Attaullah @ Atta Hussain before the principal seat of this Court at Karachi, seeking protection from the brothers of Mst. Parveen who had threatened to kill them on their free-will marriage. By order dated 24.5.2018 passed in the said C.P No.S-985/2018, it was ordered as follows:-

*“Petitioners have entered into marriage contract on 13.4.2018. I have seen the original free will and nikahnama and returned the same. The petitioners are present in Court and, therefore, in view of the factual position, if at all any FIR has been registered by any of the Police Station Kot Diji, District Khairpur or at Karachi on the allegation of abduction or enticing away of petitioner No.1 by the petitioner No.2, the police is restrained from arresting the petitioner No.2 and nobody only on the allegation of abduction of petitioner No.1 because she has contracted marriage with petitioner No.2 on her freewill. The petitioners are satisfied with the above order. Let copy of this order be sent to all the official respondents.”*

In view of the events recorded in the aforesaid C.P No.S-985/2018, the question whether the marriage between the abductee and Attaullah had taken place by freewill or not, or was such marriage the result of the alleged offence, this becomes a question of further inquiry

in the very least, thereby attracting sub-Section (2) of Section 497 Cr.PC. So also, after the order dated 24.5.2018 passed in C.P No.S-985/2018, the continued arrest of the applicants is not justifiable. Learned DPG has also conceded to the same.

In these circumstances, I am inclined to grant bail. The applicants/accused Wajid Ali son of Karim Bux and Ali Afzal son of Punhal are admitted to bail and ordered to be released from Jail unless required in any other custody matter, subject to furnishing solvent surety in the sum of Rs.75,000/-each with PR bond in like amount to the satisfaction of learned trial court. The release order be communicated by the trial court to the jail authorities also by fax so as to expedite the release of the applicants latest by 14.6.2018 i.e before Eid.

JUDGE