

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
Cr. Bail Application No. 673 of 2020  
Athar Baz S/o Syed Aman Shah (Applicant)

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DATE

ORDER WITH SIGNATURE OF JUDGE

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For hearing of Bail Application.  
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**18.05.2020.**

Mr. Tariq Mehmood A. Khan, Advocate for Applicant.  
Mr. Khadim Hussain Khooharo, Addl. P.G.  
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Through this Application the Applicant seeks post arrest bail in FIR No. 104/2019 registered under Section 302 & 34 PPC, at P.S. Peerabad, Karachi. The earlier bail application of the Applicant has been dismissed by the Additional Sessions Judge-XII, District West, Karachi vide Order dated 02.05.2020.

I have heard the learned Counsel for the Applicant/Accused as well as Additional Prosecutor General, whereas, despite issuance of notice and being intimated via telephone by the I.O, nobody is in attendance on behalf of the Complainant. My observations are as under: -

i. It has been alleged in the FIR that the Complainant was informed by one Shahid that his cousin namely deceased Meer Rehman has been murdered. According to the FIR the alleged offence took place at or about 05:30 p.m. on 19.05.2019. Admittedly none of the accused have been nominated in the FIR.

ii. Learned Counsel for the Applicant has argued that the learned Trial Court fell in error in dismissing the bail application of the Applicant inasmuch as three other co-accused including one having a similar role were earlier granted bail vide Order dated 11.12.2019 and as per rule of consistency, the Applicant/Accused is also entitled for a similar treatment as per settled law. He has further argued that the Applicant/Accused was never nominated in the FIR; but was implicated along with

other co-accused on the basis of Statement under Section 161 / 164 Cr.P.C. of a witness recorded after 53 days of the incident; hence it is a case of further inquiry.

iii. On perusal of the record, it appears to be an admitted position that the Applicant/Accused including other accused have not been nominated in the FIR; but have been implicated along with other co-accused pursuant to a 164 Cr.P.C. Statement of one Aurang Zaib on 11.07.2019 appearing as a witness. Though the Counsel for the Applicant has raised numerous discrepancies and arguments for making out a case of further inquiry; however, I would first like to address the question of applicability of the rule of consistency.

iv. The learned Trial Court vide Order dated 11.12.2019 has granted bail to three co-accused namely *Muhammad Saeed*, *Tawseef* and *Muhammad Ayub*. Muhammad Saeed and Tawseef, apparently they have been assigned a different role in the 164 Cr.P.C Statement of the witness. Insofar as *Muhammad Ayub Afridi* is concerned, it has been alleged by the eye-witness that he took out a knife and attacked the deceased and thereafter threatened the said witness of dire-consequences. As per the statement of the witness, it appears that the deceased has been allegedly murdered by use of knife by one Abdul Hameed, the other co-accused. The role assigned to the present Applicant in this statement is that he took out a pistol and was guarding the gate of the room; but it has not been alleged that the present Applicant either fired from his pistol; or caused any direct injury to the deceased. Apparently from this Statement of the witness, the role assigned to the present Applicant is much less serious than the one assigned to the other co-accused *Muhammad Ayub Afridi*, who has been granted bail by the trial court. The relevant portion of the Order dated 11.12.2019, through which bail was granted to three other co-accused including *Muhammad Ayub Afridi*, reads as under: -

“It is further stated by the complainant that on inquiry he received information that his cousin was present at Dera and the door was locked from outside and in the evening time his cousin were calling him through phone but his cousin was not attending the phone then the people of the locality entered in the said Dera after breaking the lock where the dead body of his cousin was lying there with blood to whom unknown

person(s) had killed his cousin by inflicting dagger blows and slaughtered him from neck due to unknown reasons. *It is reflected from record that the names of the applicants/accused persons do not transpire in the FIR. It is also reflected from the record that the only piece of evidence is the statement of PW Aurang Zaib alias Chotta son of Saz Khan, which was recorded after delay of 53 days of the occurrence and the reason for delay is not given. The delay in recording the statement creates doubt in the case of the prosecution qua the guilt of the accused.* Furthermore, the applicant/accused Muhammad Ayub is not well and as per report of Chief Medical Officer Central Prison Karachi he was sent several times to the Civil Hospital for his treatment.”

v. While confronted, the learned Prosecutor has argued that *Muhammad Ayub Afridi* was granted bail on medical grounds and not on merits, whereas, the same reasoning appears to have been recorded in the order dated 02.05.2020 whereby, the bail application of the present Applicant/Accused was dismissed. However, on a bare perusal of the above order, I am of the view that the bail was granted to all three accused including *Muhammad Ayub Afridi* on merits as all along the role of all *applicants / accused* has been discussed collectively. It is not an order wherein; the learned trial court has discussed the role of each accused regarding merits independently and or separately. It is only after doing so, that additionally with the use of words “moreover”, medical condition of *Muhammad Ayub Afridi* has been discussed. All in all, the order of such bail to the said *Muhammad Ayub Afridi* is not solely on medical grounds. In fact, even the medical grounds have been mentioned in a generalized terms and not in a manner which is required to be done when bail is solely granted on such grounds. Hence as per settled law, the rule of consistency applies to the case of the present Applicant as well. I am of the view that the learned Judge while dismissing the bail application of the present Applicant / Accused has fell in error while observing that *Muhammad Ayub Afridi* was granted bail solely on medical grounds and has failed to appreciate the earlier order, whereby, bail was granted to other co-accused, including the accused who has either been assigned similar role; rather, a less serious role in the commission of the alleged offence. The findings to that effect does not find any support in bail granting order dated 11.12.2019. I am of the view that the learned Judge ought to have gone through the earlier bail granting order with much care and attention and not in a slipshod manner, so as to deny the concession of bail to

the present Applicant / Accused, who in the facts as above appears to be entitled to it while following the rule of consistency.

vi. The learned Law Officer has not been able to point out evidence suggestive of any aggravated role played by the petitioner in the scam; he cannot be treated differently. Sauce for the goose is sauce for the gander<sup>1</sup>. Since the co-accused of the petitioner, who had also been attributed firearm injuries, has already been allowed bail therefore, the case of the petitioner, being at par with that of his co-accused, also deserves the same treatment as such the petitioner is entitled to bail<sup>2</sup>. The learned counsel for the petitioner has drawn our attention towards the fact that a co-accused of the petitioner namely Jawad Ahmad, attributed a role similar to that ascribed to the petitioner, has already been admitted to post-arrest bail by the Lahore High Court, Lahore vide order dated 16-11-2010 passed, in Criminal Miscellaneous No. 12755-B of 2010. For the reasons recorded above we have felt sanguine that the case against the petitioner calls for further inquiry into his guilt within the purview of subsection (2) of section 497, Cr.P.C<sup>3</sup>.

In view of hereinabove facts and circumstances of this case, and while following the rule of consistency, and for the reason that the case of the present Applicant / Accused is of further inquiry into his guilt in the commission of the alleged offence, I am of the view that Applicant/Accused has made out a case for grant of bail, and therefore, by means of a short order dated 18.05.2020, he was granted post arrest bail on furnishing surety in the sum of Rs.200,000/- with P.R bond in the like amount to the satisfaction of the Trial Court and these are the reasons in support thereof. It is needless to state that the observations made hereinabove are tentative in nature and shall not have any effect on the trial which shall proceed in accordance with law.

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<sup>1</sup> Gulab Khan v Chairman NAB (2020 SCMR 285)

<sup>2</sup> Abid v The State (2016 SCMR 907)

<sup>3</sup> Shahid Hussain v The State (2011 SCMR 1673)

**J U D G E**