

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Bail Application No.S-1005 of 2021

Applicants : Qamar-u-Zaman Son of Muhammad Ameen Khokhar and Shah Nawaz alias Nawaz Son of Muhammad Laik, through M/s Syed Tarique Ahmed Shah and Saad Salman Ghani, Advocates.

Respondent : The State through Ms. Rameshan Oad, Assistant Prosecutor General, Sindh.

Complainant : Saeed Khan Son of Imam Bux through Mr. Shahid Akhtar Awan, Advocate.

Date of hearing : 22.11.2021
Date of Order : 22.11.2021

O R D E R

AMJAD ALI SAHITO, J:- Through the instant bail application, the applicants/accused above named seek their post-arrest bail in Crime No.22 of 2021, under sections 302, 109, 34 P.P.C, registered at P.S Moya, after their bail plea was declined by the learned Sessions Judge Tando Muhammad Khan vide order dated 13.10.2021.

2. The details and particulars of the F.I.R. are already available in the bail application and F.I.R., same could be gathered from the copy of F.I.R. attached with such application, hence needs not to reproduce the same hereunder.

3. Per learned counsel for the applicants that no doubt the names of the applicants/accused are appearing in the F.I.R and as per version of the complainant that the main accused namely Muhammad Juman made straight fire upon the deceased Muhammad Qasim which hit on his left leg whereas accused Dildar alias Dillo also made straight fire from his repeater upon the deceased Qasim which was hit on the left thigh of the leg afterwards the present applicants/accused Qamar-u-Zaman Shah Nawaz alias Nawaz caused backside of hatchet and iron rod to the brother of complainant namely Qasim on different parts of the body. He further argued that in post-mortem report only three injuries have been shown out of which two are firearm injuries one is hard and blunt substance the claims of the complainant is that they have caused blunt side of

hatchet and iron rod blows on the different parts of the body, as such, there is conflict between ocular and medical evidence. He further contended that the complainant has also admitted in the F.I.R. that there was old enmity between the parties and F.I.R has delayed near about 22 hours, as such, false implication cannot be ruled out at this stage. He lastly prayed for grant of bail. To support the above contentions, the learned counsel relied upon the cases of **MUHAMMAD RAMZAN Vs. The STATE and others [2016 SCMR 2046]**, **AWAN KHAN and 7 others Vs. The STATE through AG-KPK and another** and **ZULFIQAR Vs. THE STATE [2002 P Cr.L J 791]**.

4. On the other hand learned counsel for the complainant as well as learned Assistant Prosecutor General, Sindh submit that the names of the applicants/accused appeared in the F.I.R with specific role that they have caused the blunt side of hatchet and iron rod blows on the different parts of the body of deceased Qasim. They further contended that they are cousins to each other and they have murdered innocent person, as such, they are not entitled for grant of bail.

5. I have heard the learned counsel for the applicants, learned counsel for the complainant as well as learned Assistant Prosecutor General, Sindh having also gone through the record available.

6. Perusal of material reflects that there is delay of about 22 hours in lodgment of F.I.R, no plausible explanation has been furnished by the complainant. As per contention of the F.I.R, the role assigned against the main accused who are not before the Court namely Muhammad Juman and Dildar alias Dillo who have made fires upon the deceased Qasim resultantly he become injured and subsequently the role assigned against both the applicants/accused they have caused blunt side of hatchet and iron rod blows on the different parts of the body. As per post-mortem report the deceased received total three injuries out of which two are firearm injuries one is hard blunt substance. In the case of **MUHAMMAD RAMZAN supra** the Hon'ble Supreme Court of Pakistan granted

bail to the accused that there is a conflict between ocular and medical evidence. The portion of whereof reads in the following manner that: *The said cross-version had also alleged that a co-accused of the petitioner namely Muhammad Anwar, armed with a pistol, had also effectively fired at Humaira deceased. The Post-mortem Examination Report pertaining to the deadbody of Humaira deceased showed that the said deceased had sustained only one firearm injury on her left thigh and, thus, the only firearm injury received by the said deceased stood attributed to two accused persons, i.e. the present petitioner and his co-accused namely Muhammad Anwar. The Post-mortem Examination Report further shows that a bullet had been recovered from the firearm injury received by the said lady and during the investigation a gun had been recovered from the petitioner's custody whereas a pistol had been recovered from Muhammad Anwar co-accused. This prima facie indicates that the medical evidence available on the record may not be supporting the case of the prosecution vis-à-vis the role played by the petitioner. Apart from that the case in hand is a case of different versions advanced by the rival parties and in the above mentioned backdrop of lack of support from the medical evidence vis-à-vis the role attributed to the petitioner we have found the case against the petitioner to be a case calling for further inquiry into his guilt.*" In another case of **AWAL KHAN and 7 others supra** bail was granted to the accused by the Hon'ble Supreme Court of Pakistan on the ground when the medical evidence was in conflict with the ocular account when benefit of doubt at bail stage must go to the accused. It would be appropriate to reproduce the relevant para-9 of the judgment reads as under:

"9. As the number of injuries on the deceased, a single inlet and exit wound and two shots fired at the two victims each with the short gun probably is the job of two persons at the most but nine persons have been charged for effectively firing at them. Thus, the contradiction between the ocular account and medical evidence has rendered the case of the petitioners to be one of further inquiry at the movement."

And lastly in the case of **Zufiqar supra** the Divisional bench of this Court held as under:

"As per version of the complainant the deceased received fire-arm injuries at his chest, abdomen and back while the medical version is that the deceased received injuries on left side of neck, left forearm and left shoulder hence the injuries stated by complainant do not find place in the post-mortem report."

Taking the guidelines from the above judgment/order, the learned counsel for the applicants/accused made out a case for grant of bail in view of sub-section (2) of

section 497 Cr.P.C, resultantly the instant bail application is allowed. The applicants/accused Qamar-u-Zaman and Shah Nawaz alias Nawaz are enlarged on bail subject to their furnishing solvent surety in the sum of Rs.100,000/- each and P.R. bonds in the like amount to the satisfaction of learned Trial Court.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of the applicants on merits.

*Muhammad Danish**

JUDGE