

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:

**Mr. Justice Muhammad Iqbal Kalhoro J.**  
**Mr. Justice Agha Faisal J.**

Cr. Bail. Application No.D-633 of 2022

Muhammad Ali @ Ali Wazir ----- Applicant  
Versus

The State ----- Respondent

M/s Salahuddin Khan Gandapur & Qadir Khan,  
advocates for applicant.

Mr. Ali Haider Saleem, Addl. P.G. a/w PI Ghulam Mujtaba  
of P.s. Shah Latif Town I.O.

**11.05.2022**

**ORDER**

**MUHAMMAD IQBAL KALHORO J:** Applicant was arrested on 15.12.2020 in crime No.06/2020 registered at Police Station Sohrab Goth, Karachi u/s 120-B, 121, 121-A, 124-A, 153, 153-A, 505, 505(ii), 506, 188, 34 PPC r/w section 7 of Anti-Terrorism Act, 1997 for delivering hate speeches against certain Institutions of the State including Pak Army alleging, *inter alia*, that they were indulging in massacre of Pukhtoons and denying them their due rights. In the said case, applicant has been granted bail by the Honourable Supreme Court vide order dated 30.11.2021 in Cr. Petition No.83-K of 2021.

2. Since present FIR bearing crime No.303/2018 of P.S. Shah Latif Town, Karachi u/s 124-A, 153-A, 500, 505, 148, 149 PPC r/w section 4, 7, 9 of ATA, 1997 also stood already registered (on 07.05.2018) against applicant containing more or less identical allegations as mentioned in the afore said FIR, he was not released by the jail authorities. Therefore, by means of this application, he is seeking relief of bail in the said FIR. We have asked learned Addl. P.G and I.O. present in court as to whether applicant has been formally arrested in this case, they have replied in affirmative, however,

have not been able to cite any document i.e. memo of arrest, etc. to support their claim and confirm arrest of the applicant in the present crime and offences.

3. Learned counsel for applicant in his arguments has stated that mandatory sanction u/s 196 CrPC for registration of FIR u/s 124-A and 153-A PPC has not been obtained from the government before registration of this case. Co-accused against whom identical allegations have been leveled are on bail and those who are not on bail such as Manzoor Ahmed Pashteen and Mohsin Dawar, no action for their arrest has been taken. To support his arguments, he has referred to Article 138 and 268 (6) of the Constitution in addition to case law reported as 1993 SCMR 71.

4. Learned Addl. P.G has, however, opposed the application and has stated, citing case law reported as 2016 SCMR 787, that the sanction as required u/s 196 CrPC is not necessary in the cases registered under Anti-Terrorism Act, 1997. However, he has not disputed that the speeches were made mostly in Pashto, and transcript of which with verbatim translation the prosecution has not been able to procure up till now. The case is pending in the Court since May, 2018, for 04 years, but not a single witness has been examined by the trial Court. Against identical allegations: making hate-speeches against certain Institution of the State and Law Enforcement Agencies, the Honorable Supreme Court has already granted bail to the applicant observing, in the main, that nothing has been brought to distinguish role of the applicant from other accused who have been released on bail. In this case, apart from applicant, at least four (4) other accused duly nominated are alleged to have made similar speeches. Two co-accused namely Umar Khatak and Uman Khatak are on bail, whereas accused Dr. Jameel and Manzoor Ahmed Pashteen are not. But no effort, admitted by the I.O. for their arrest even has been launched, nor any move to challenge bail granted to other two co accused has been made. Therefore, not only on the rule of consistency but on merits as well applicant appears to be entitled to grant of post arrest bail. In absence of transcript verifying contents of FIR, the material showing distinction in the

case of applicant to that of co-accused already on bail, and absence of any document confirming arrest of the applicant in the present case, his case would call for further inquiry.

5. Plus the investigation is over and Challan (report u/s 173 CrPC) has already been submitted. The applicant is in jail for almost one and half year without any progress in the trial. His further incarceration in such circumstances in jail is not likely to add anything to the prosecution case particularly when it is not clear how much time prosecution is to take to procure presence of co-accused who are not before the trial court. And, therefore, understandably there is no likelihood of the trial to culminate in near future. In consideration of all these facts and circumstances coupled with the order passed by Honorable Supreme Court in Cr. Petition No.83-K of 2021 granting bail to applicant against similar background, we allow this application and grant bail to the applicant against furnishing a solvent surety in the sum of Rs.500,000/- and PR bond in the same amount to the satisfaction of the trial Court.

Needless to mention here that observations made hereinabove are tentative in nature and would not prejudice case of either party at trial.

JUDGE

JUDGE

A.K