

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

1st Criminal Bail Application No.S-45 of 2022
[Muhammad Iqbal Abbasi Son of Ali Hassan Vs. The State]

Criminal Bail Application No.S-69 of 2022
[Muhammad Suleman Son of Bahadur Solangi Vs. The State]

Pre-Arrest Bail Application No.S-91 of 2022
[Khamiso Son of Chibar Vs. The State]

Pre-Arrest Bail Application No.S-151 of 2022
[Abid Ali Noodani Son of Rasool Bux Noodani Vs. The State]

Date of hearing : 01.07.2022

Complainant
[*Insaf son of Sohnu*] : Through Mr. Ali Ahmed Palh,
Advocate.

Applicant
[*Muhammad Iqbal Abbasi*] : Through Mr. Athar Abbas
Solangi, Advocate.

Applicant
[*Muhammad Suleman*] : Through Syed Shahzad Ali Shah,
Advocate.

Applicant
[*Khamiso*] : Mr. Muhammad Ali Rajput,
Advocate holding brief for
Mr. Muhammad Asif Shaikh,
Advocate for Applicant-Khamiso

Applicant
[*Abid Ali Noodani*] : Through Mr. Muhammad Sohail
Anwar, Advocate.

Respondent
[The State] : Through Mr. Imran Ali Abbasi,
learned A.P.G.

Offence Under Sections 302, 34, PPC
Crime No.82 of 2021
Police Station Rahuki,
District Hyderabad.

ORDER

Muhammad Faisal Kamal Alam, J: All the above Bail Applications except Bail Application No.S-45 of 2022 (*Muhammad Iqbal Abbasi Son of Ali Hassan Vs. The State*) are decided by this common Order as FIR lodged in Crime No.82 of 2021 is the common subject matter of all these Bail Applications.

Bail Application No.S-45 of 2022 has been disposed of by the Order dated 01.07.2022 in view of the compromise entered into between the Complainant–Insaf son of Sohnu and Applicant / Accused in Bail Application No.S-45 of 2022, viz. Muhammad Iqbal Abbasi. The relevant portion of the Order dated 01.07.2022 passed in the above Bail Application No.S-45 of 2022 is reproduced herein under_

“Learned counsel states that Applicant / Accused Muhammad Iqbal Abbasi in Cr. B.A. No.S-45 of 2022 has entered into compromise with the Complainant. This fact is confirmed by Mr. Ali Ahmed Palh, Advocate who represents the Complainant. Complainant who is also present in person also confirms this fact. The no-objection affidavit filed on behalf of Complainant is taken on record in which he has stated that he has no objection if the interim bail is confirmed to Applicant / Accused Muhammad Iqbal Abbasi. Ordered accordingly. The interim bail granted

earlier to Applicant Muhammad Iqbal Abbasi is confirmed in view of the above.”

2. The relevant facts of the FIR lodged by the above named Complainant on 19.12.2021 at 1700 hours about the incident of 18.12.2021 is, that the said Complainant and his brother Hanif Katiyar (deceased) came to Tando Adam Malpiri for sale of livestock in their Datsun Vehicle. At about 1100 hours SHO P.S (Police Station) Rahuki, namely, Muhammad Iqbal Abbasi (**Applicant/Accused in Bail Application No.S-45 of 2022**) and two other Police Constables, namely, Khamiso Noondani and Suleman Solangi [Applicant/Accused in Criminal Bail Applications No.S-69 and 91 of 2022] along with two other Police personnel dragged the above deceased and took him away in White Colour Cultus Car along with above Datsun Vehicle. On 19.12.2021, the Complainant was informed that his brother Hanif was murdered by above named SHO Police Station Rahuki and his dead body is at Civil Hospital, Hyderabad. Complainant along with his other relatives visited Civil Hospital Hyderabad and brought the dead body of deceased-Hanif Katiyar at Police Station Rahuki in Ambulance and reported the matter.

3. Learned Advocate for Accused-Muhammad Suleman Solangi (in Bail Application No.S-69 of 2022) has argued that as it is an unseen incident, which requires further inquiry; no earlier enmity is mentioned by the Complainant and hence no ill motive can be attributed towards the Applicant / Accused – Muhammad Suleman; since compromise has taken effect between Complainant and main accused/SHO Iqbal Abbasi, therefore, present Applicant / Accused should be given the same treatment under the principle of

consistency in Bail matters and concession of bail be extended to the Applicant/accused.

Learned Advocate representing Khamiso son of Chibar, Applicant / Accused in Bail Application No.S-91 of 2022, has submitted the same arguments relating to Police Constable Muhammad Suleman [*ibid*] and has requested for grant of Bail to the Applicant / Accused, who has been nominated in the FIR.

Whereas learned Advocate appearing for Abid Ali Noodani, Applicant / Accused in Bail Application No.S-151 of 2022, has stated that the Applicant / Accused is a private person and he has been nominated in the FIR on the subsequent Statement of one of the Accused; he contends that such a Statement has no evidential value in terms of the Article-38 of the Qanoon-e-Shahabad Order, 1984. Further contends that there is a delay of one day in lodging of FIR; since main Applicant / Accused has been granted bail in view of the above Order passed in Criminal Bail Application No.S-45 of 2022, therefore, the same treatment be given to the present Applicant / Accused.

4. Learned Advocate for the Complainant has opposed the Bail Applications and particularly that of Abid Ali Noodani. He states that the said Applicant / Accused is a Driver of above named SHO Muhammad Iqbal Abbasi and is notorious for carrying out such illegal activities. While rebutting the contention of learned Advocates for Applicant / Accused, about Rule of consistency, learned counsel for the Complainant has argued, that the grant of Bail to Co-accused Iqbal Abbasi is not on merits but is an outcome of a compromise, which in fact is an admission of the guilt on the part of said Iqbal Abbasi. Contends that Call Data Record (CDR) showed

the presence of all Accused at the Police Station Rahuki, therefore, no *ill-motive* or *mala fide* can be attributed towards Complainant, who has lost his innocent brother. In support of his contention, he has cited the following Case Law_

- i. 2006 SCMR 933
[Masood Ahmed and another Vs. The State]
- ii. 2012 YLR 1432 (Sindh)
[Abdul Razzaq Vs. The State]

5. Learned Assistant Prosecutor General has stated that Abid Ali Noodani was implicated not on the further Statement of any Co-Accused but Complainant, which is substantiated by Statements of other Police Officials, recorded under Section 161 of Cr.PC (Criminal Procedure Code). While referring to the Police Papers (Record), he has stated that above named deceased died in the Police custody, that is, at Police Station Rahuki.

6. Arguments heard and record perused.

Learned APG has submitted the Police Papers along with English Translation. He has relied upon the Judgment handed down by the Hon'ble Supreme Court in *Ghulam Raza Soomro case*, reported as *2000 SCMR 1645 (Ghulam Raza Soomro Vs. The State)*. The Hon'ble Supreme Court in the above *Soomro Case* has refused to grant Bail to the petitioner and co-accused (of the reported case), who were Police Officials and were tried of causing death of an accused in their custody. Reasons for refusal to grant the Bail was that it was established that deceased died due to injuries sustained while in Police custody.

7. In the present Case, Final Postmortem Report in respect of the deceased Hanif Kathyar, dated 19.12.2021 has been perused, wherein, it is opined that cause of death is **Neurogenic Shock caused by physical**

assault. Relevant findings are that duration between injuries and death is approximately 2 to 3 hours; cavity of both lungs was severely congested and filled with clotted blood; body of the deceased had multiple bruises.

8. According to Statement recorded under Section 161 [of Cr.PC], of one of the prosecution witnesses Abdul Hafeez Abbasi (WPC) dated 08.01.2022, it has been stated, *inter alia*, that above deceased was given Third Degree (torture). After some time, the said deceased was lying unconscious in the Room of SHO-Muhammad Iqbal Abbasi; even certain manipulation were also made in the entry record of Police Station. After some time a call was received from the Hospital that above SHO has left one dead body at the Hospital.

9. Even above named Muhammad Iqbal Abbasi in his Statement under Section 161 has stated that PC [Police Constable] Khamiso Khan and Salman Solangi interrogated the above deceased and during interrogation the deceased became unconscious and later died. Although in his Statement, the said SHO has stated that he was not present at the time of incident but *prima facie* one thing is clear, that the deceased died in Police Custody during interrogation. Besides, in FIR, a specific role is assigned to the two Applicants/accused, who are Policemen.

10. In the intervening period, investigation of the Subject Crime/Case was transferred to the DSP of CIA [Matiari] Mr. Ali Shair Khaskheli, whose Report is available in the Police Papers (Record). The conclusion of the said Report is that the deceased Hanif Katiyar was beaten up to death during interrogation by the present Applicants/Accused and later his body was sent to the Civil Hospital.

11. Although at this stage deeper appreciation of the facts cannot be done; however, the undisputed record speaks for itself. It is a horrific incident in which a person has died in Police custody and to cover up the

illegalities even manipulation in the record of Police Station is made, as apparent from the above Report. Strict disciplinary action should have been taken against the Police personnel by the Senior Police Officials, if the *prima facie* evidence has come on record about the custodial death. The state functionaries should realise that if such incidents are not curbed with an iron hand, then public trust in Police force will be completely diminished, resulting in a chaotic situation. Such incidents can result in disturbing the civil order of the Society, if persons in uniform act with such impunity.

12. In view of the above discussion all the Bail Applications except Criminal Bail Application No.S-45 of 2022, are dismissed. The interim bail granted to the Applicants/Accused earlier are recalled.

Dated 15.07.2022
M.Javid.P.A.

JUDGE

