

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

Crl. Bail Application No. 1032 of 2022

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGES</b>
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For hearing of bail application.

**28-10-2022**

Mr. Ahsan Siyal, Advocate for the applicant.  
Mr. Tariq Aziz, Advocate for complainant.  
Mr. Talib Ali Memon, A.P.G.

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**Omar Sial, J.**: At about 8:15 p.m. on 28.08.2021, Mola Bux was informed over the phone by his niece Mehnaz that 2 neighborhood boys, namely Rajoo and Owais, had quarreled with her brother Sabir Ali, and in that quarrel Rajoo had hit Sabir on his head with an iron rod. Sabir, was taken to the hospital in an injured condition, but he unfortunately succumbed to his injuries. F.I.R. No. 354 of 2021 was registered under sections 302 and 34 P.P.C. at the Mochko police station at 9:15 p.m. on 28.08.2021.

2. Police investigation revealed that a squabble between children had accelerated into a quarrel between Sabir Ali and 3 other boys, Owais, Rajoo and Ali. Later, the complainant party realized that it was not Ali who had fought with Sabir but that it was Ali's brother Yar Mohammad. The wrong identification had been made as Ali and Yar Mohammad were similar looking. Rajoo, whose actual name is Abdul Ahad, is the applicant in this bail. Earlier, his application seeking bail was dismissed by the learned 1<sup>st</sup> Additional Sessions Judge, Karachi West on 12.05.2022.

3. Learned counsel for the applicant has argued that while it is recorded in the F.I.R. that it was the applicant who had hit Sabir on the head with an iron rod, a subsequent section 161 Cr.P.C. statement recorded by Mehnaz, the eye witness to the occurrence, states that all 3 boys had hit Sabir. This, according to the learned counsel, created doubt in the prosecution case. Learned counsel also argued that the applicant deserved the concession of bail on grounds of consistency, as both Ali and Owais have also been granted bail. He also submitted that there is a delay in the recording of the F.I.R. and that the complainant was not even an eye witness to the occurrence. Learned APG, who was assisted by

the learned counsel for the complainant have both supported the impugned order.

4. I have heard the counsels and with their able assistance have perused the record.

5. The incident was seen by Mehnaz and it is she who is the star witness in this case. She knew the boys well as they were her neighbors. She was honest enough to admit that because of the trauma she experienced and because Ali and his brother Yar Mohammad looked similar, she had made a mistake in identifying Ali. However, she made no such acknowledgment for the present applicant. It would be appropriate to address the submissions of the learned counsel. It is true that the complainant was not an eye witness. Any person can provide information of the occurrence of a cognizable offence to a police station. The law does not require that the complainant must mandatorily be an eye witness. In any case, Mehnaz, the sister of the deceased, is an eye witness; has recorded her statement with the police and is also one of the persons listed in the calendar of witnesses.

6. Ali was discharged from the case as the complainant and Mehnaz themselves had come to the police and told it that they had made a mistake in identifying the 3<sup>rd</sup> boy who had quarreled with Sabir and that it was not Ali but his brother Yar Mohammad. Awais was granted bail on 07.04.2022 as one, no specific role was attributed to him, and two, because he was a juvenile. Ali was discharged under section 63 Cr.P.C. The present applicant's case is certainly not on the same footing as the co-accused. The present applicant is not a juvenile, has been assigned a specific role, remained an absconder for 8 months, knowing fully well that a case had been registered against him and the ground of misidentification is also not applicable to him. He cannot claim the same relief as that given to Awais and Ali on grounds of consistency.

7. The contradiction which the learned counsel has argued i.e. Mehnaz in her section 161 Cr.P.C. statement has recorded that all 3 boys hit Sabir whereas in the F.I.R. it is the applicant who has been specifically mentioned as the only person who had hit the iron rod on Sabir's head, at this preliminary stage would tantamount to a deeper appreciation of evidence. The evidence will have to be

looked at holistically by the learned trial judge to reach a finding in this regard. I am not inclined to give the applicant benefit on this account at this stage.

8. Then there is the question of malafide. This court had observed in the case of co-accused Awais that no specific allegation had been made against Awais and that there was a possibility that the net was thrown wide to bring within its ambit persons who may have been present on the scene but had nothing to do with the death of Sabir. The present applicant's case is also different in this regard. Mehnaz, against whom no malafide, enmity or ill-will was assigned by the learned counsel, prima facie had no reason to specifically nominate the applicant as being the person who had caused the fatal blow. The medical evidence on record, upon a tentative assessment also corroborates Mehnaz's ocular account. The prima facie absence of *malafide* is yet another reason, for me to conclude that the applicant is not entitled to the concession of pre-arrest bail. The applicant's own conduct i.e. remaining absent for 8 months and then not proceeding with this bail application for 6 hearings spread out over a 4 month period also reflects negatively on his conduct and an adverse inference can be drawn from it.

9. In view of the specific allegation against the applicant as well as the presence of an eye witness who saw the incident and who prima facie has no malafide towards the applicant, in addition to the above observations, I am not inclined to confirm the interim pre-arrest bail granted to the applicant earlier. The bail application is therefore dismissed.

**JUDGE**