

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail Application No.S- 799 of 2022

Date of hearing: 27.03.2023.
Date of Order: 30.03.2023.

Mr. Sanaullah Khoso, Advocate for applicant.
Ms. Safa Hisbani, A.P.G for State.
Complainant present in person.

ORDER

MUHAMMAD FAISAL KAMAL ALAM, J.- Applicant / accused Muhammad Sajjan has been nominated in FIR for Crime No.07 of 2022 registered at Police Station Ali Abad for offences under Section(s) 302, 506/2, 147, 148, 149 PPC.

2. As per the contents of FIR, Manzoor Ali is the nephew of complainant (Mir Hassan son of Amir Bux) whose relative Muhammad Mithal married a woman from another community, but the marriage did not last and for this reason said Muhammad Mithal (co-accused) blamed the above nephew of complainant and also extended life threats. It is alleged that on the date of incident, the Complainant, his above nephew Manzoor Ali and other relatives were present in the field when at about 0800 hours co-accused Muhammad Mithal armed with pistol, present Applicant / accused armed with pistol, co-accused Rasool Bux armed with pistol and two unidentified persons came there and they used abusive language. Co-accused Muhammad Mithal opened fire from his pistol and Manzoor Ali sustained firearm injury on his left side of neck and succumbed to the injury; whereafter all the accused persons left the crime scene.

3. Learned counsel for the applicant / accused states that no specific role is attributed to the present applicant / accused (Muhammad Sajjan) and as per the contents of FIR the fatal injury was caused by another accused who is also behind the bars. Applicant / accused is in custody since 04.04.2022. He has prayed for grant of bail. In support of his

contentions, learned counsel has placed reliance on the cases reported as **Mukhtiar v. The State** (2008 YLR 1753), **Abdul Aziz v. The State** (1996 SCMR 1693) and **Master Ghulam Muhammad and others v. The State** (2010 MLD 877).

Gist of the case law cited by Applicant's counsel is, that when an applicant/ accused did not cause any injury to the deceased, except a minor injury to one of the prosecution witnesses, bail was granted. Where from the contents of FIR and record it appears that accused did not actively participate in the crime, then his mere presence at the place of incident for deciding his [accused/applicant] common intention with others in committing a crime, would be subject to further enquiry and consequently concession of bail can be granted. This Court in the case of Master Ghulam [*ibid*] has also considered the fact that parties had matrimonial dispute and there is a possibility of false implication of other co-accused.

4. On the other hand, learned A.P.G has vehemently opposed the bail application on the ground that a heinous offence has been committed in which a human life is lost. On a specific query, she stated that present applicant / accused did not cause any fatal injury to the deceased, but he is an active accomplice in the crime, hence the bail should be rejected. In support of her contentions, she placed reliance on the case of **Sarwari v. The State** (1991 SCMR 289) and **Ibrahim v. The State** (2012 YLR 983).

Summary of the Case law cited by learning APG is, the petitioner [of the reported decision] was apprehended by police during raid; responding his call for help, his another accomplice fired gun shot at Head Constable, resulting in his death. Honourable Supreme Court rejected the bail of the petitioner, as a specific role was assigned to him, inter alia, that he instigated his co-accused who resorted to firing and killed a Police person. The Petitioner / accused [of the reported Case] was present at the scene in which son in law of complainant was killed. It is held that although no specific role of accused is mentioned in FIR, but his presence at the crime scene had led to a tentative view that the accused shared common intention to commit the murder of the deceased; secondly this fact was also considered by this Court, that

Complainant had no ulterior motive to falsely implicate the accused/ petitioner; hence, Bail was refused.

5. Complainant present in person has supported the arguments advance by learned A.P.G and opposed the bail application.

6. Admittedly, no specific role has been assigned to the applicant / accused except his presence at the crime scene. His guilt is yet to be assessed in a trial for connecting him with the offence committed, particularly, about common intention to commit the murder of Manzoor Ali, nephew of complainant. Challan has been submitted and therefore, the applicant / accused is not in a position to influence the witnesses and / or interfere in the investigation. He is in custody since 04.04.2022. To the facts of present case, rule laid down in the reported decisions relied upon by learned counsel for the Applicant, is relevant. Consequently, this bail application is allowed. The applicant / accused if not required in any other case / crime, shall be released on bail from prison, subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Lac) and P.R Bond in the like amount to the satisfaction of the learned Trial Court.

7. Above is a tentative assessment and the observations made hereinabove shall not influence the trial and if the concession of bail is misused, then the learned Trial Court can pass an appropriate order.

JUDGE

Tufail