

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 2085 of 2022

Crl. Bail Application No. 1413 of 2022

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

11-05-2023

Syed Suleman Badshah, Advocate a/w applicants.

Khawaja Naveed Ahmed and Mr. Ghulam Mustafa, Advocates for complainant.

Mr. Talib Ali Memon, APG and Ms. Robina Qadir, Addl.P.G.

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Omar Sial, J: Mohammad Ahsan and Faiz Mohammad have sought pre arrest bail in crime number 222 of 2022 registered under sections 302, 324 and 34 34 P.P.C. at the Gadap police station. Earlier, their applications seeking bail were dismissed by the learned 1st Additional Sessions Judge, Malir, Karachi on 16.07.2022.

2. A background to the case is that the aforementioned F.I.R. was registered on 26.05.2022 at 00:30 hours on the complaint of Arif Sabir who reported an incident which had occurred on 24.05.2022 at 11:30 p.m. He recorded that he was woken up at 2:00 a.m. on 25.05.2022 by a phone call informing him that he should come to the Agha Khan Hospital as his son Shahmeer had been injured. The complainant reached the Hospital and found out that Shahmeer was unconscious and hooked up to a ventilator. Jazlan, who was Shahmeer's cousin told the complainant that he along with Shahmeer and another friend Zargam had gone to visit a friend and on the way back a young boy performing stunts on a motorcycle narrowly missed hitting their car. When the boys reprimanded the motor cyclist, he called his brothers for help and started chasing the boys' vehicle. Soon thereafter some other boys appeared in another vehicle and started shooting at the boys' vehicles. The accused were identified as Mohammad Ahsan (the applicant), Mohammad Irfan and Inshal Hassan Khan and Mohammad

Hasnain. Jazlan died in the shooting whereas a bullet grazed Shahmeer's head injuring him seriously. Faiz Mohammad appears to have been nominated subsequently in the case as it was alleged that out of 2 pistols used in the crime, a 9 mm pistol was owned by Faiz Mohammad.

3. I have heard the learned counsel for the applicants and the learned APG as well as the learned counsel for the complainant. My observations and findings are as follows.

4. There are a total of 8 witnesses in this case. Out of these witnesses at least 4 are said to be eye witnesses to the unfortunate episode. The main witness in the case, however, is a resident of Bahria Town by the name of Syed Ibrahim Ahsan. Ibrahim claims that he saw all the accused (except Faiz Mohammad) and has highlighted their involvement in the incident. The remaining eye witnesses were all present on the scene, however, did not know the names of the accused until Ibrahim had identified them. Bahria Town is where the complainant party were returning from when this incident occurred and hence Ibrahim's testimony will be important at trial. There is no reason to not believe him upon a tentative assessment of the case. Another resident of Bahria Town by the name of Shahzain Magsi is also an eye witness and he too has identified the accused and assigned roles to them (except Faiz Mohammad). Although his section 161 Cr.P.C. statement was recorded with a delay, it will be at trial that this delay will have to be explored. I am not inclined to give any concession on this account at this preliminary stage. The accused (except Faiz Mohammad) have also been identified by the injured Shahmeer although he too did not know their names at the time of the incident. One of the 2 pistols used in the crime, a 0.30 bore pistol, was also recovered from bushes close to Bahria Town on the pointation of co-accused Hasnain and some of the empties collected from the scene of the crime also matched that weapon. Prosecution appears to be in possession of sufficient evidence to establish a nexus of the crime with the applicant Ahsan. There is absolutely no malafide on the part of the complainant to have nominated Ahsan as an accused neither has malafide been argued by the counsel for the applicant.

5. The case against Faiz Mohammad is on a different footing. He was not present on the scene however it is alleged that a 9 mm pistol licensed to him was used by the shooters in the incident. He was included in the case for having aided and abetted the shooters. The 9 mm pistol was not recovered by the police and instead Faiz Mohammad told the police that it had been stolen and that he had reported the loss to a police station in Ghotki. In support of his claim, Faiz Mohammad produced an extract of the police station's Daily Diary entry. Not being satisfied by the extract, SSP Ghotki was directed to confirm whether such an entry had been made at the Ghotki police station. The SSP after conducting an inquiry reported that the extract presented by Faiz Mohammad was a fake extract; that the entry did not exist in the record of the police station and in fact that particular page of the Daily Diary had been torn out. It appears that Faiz Mohammad may have attempted to tamper with evidence. It does not reflect well on him. I however find myself unable to deny him bail on this account alone in this case. He should be given an opportunity to explain his conduct at trial. While malafide in the classic sense does not exist, perhaps the spite the family of the complainant party has for the accused may have resulted in throwing the net wide.

6. In view of the above, the pre-arrest bail application of Mohammad Ahsan is dismissed whereas the interim pre-arrest bail granted to Faiz Mohammad is confirmed however against a solvent surety of Rs. 500,000 and a P.R. Bond in the like amount to the satisfaction of the Nazir of this Court.

JUDGE