

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.  
Cr. Bail Appln.No.S-468 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGE

For orders on office objection  
For hearing of main case.

09.06.2023.

Mr. Haji Khan Jamali, advocate for applicant.  
Mr. Shahzado Saleem Nahiyoon, Addl.P.G Sindh.  
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**ORDER**

**MUHAMMAD SALEEM JESSAR, J.**-Through this application, applicant Daim Khaskheli seeks his release on post arrest bail in Crime No.55 of 2023 P.S Tando Jam, Hyderabad under sections 324, 353, 34 PPC. After completion of investigation the police have submitted the challan before the Court having jurisdiction, which is now pending for preliminary proceedings in terms of dicta laid down by the apex Court in case of *Muhammad Ramzan vs Rahib and others* (PLD 2010 SC 585).


2. The applicant was arrested on spot therefore, filed post arrest bail before the Court of Sessions which subsequently was assigned to 4<sup>th</sup> Additional Sessions Judge/MCTC-II, Hyderabad vide Criminal Bail Application No.1014 of 2023, which after hearing the parties was dismissed on 20.04.2023 hence, this application has been maintained.

3. The crux of prosecution case as unfolded by complainant ASI Ghulam Shabir Magsi of P.S Tando Jam are that on 25.03.2023 at 0600 hours, he along with his sub-ordinate staff namely PC Aziz Ahmed, PC Ahmed Ali, DPC Imdad Ali vide entry No.38 at about 0300 hours, left PS for patrolling in official vehicle No.SPC-451 in the area, while patrolling when they reached at Noor

Shah graveyard, they started snap checking and at about 0340 to 5500 hours they saw two motorcycles came from link road bypass in which five persons were boarded, out of them, one motorcycle was Honda 125 cc, on which three person sitting and one Uniq Motorcycle where two person were sitting. It is further stated that when they gave signal to them to stop, but they took pistol from their fold and made straight firing upon police party to commit their Qatl-e-amad; however, in their defence they also made firing upon them. He further stated that during such encounter the accused persons made their escape good except one, who was arrested along with pistol on the spot and blood was oozing from his right side of leg. He on enquiry disclosed his name Daim (present applicant) and police recovered Rs.500/- and one 30 bore TT pistol loaded with four live bullets. On further inquiry, the arrested accused disclosed the name of co-accused Muhammad Hassan Jamali hence, this FIR.

4. Learned counsel for applicant submits that applicant is a labour by profession; however, he has dispute over landed property with Khaskheli community therefore, his opponents have got implicated him in this case. He next submits that it is a case where none from the police party had sustained any injury or scratch therefore, applicability of section 324 PPC r/w Section 353 PPC is yet to be determined by the trial Court hence, case against him requires further inquiry and pray for his release on bail. In support of his arguments he places reliance upon the cases of *Muhammad Raees vs The State (2020 P.Cr.L.J Note 199)*, case of *Qurban Ali and another vs The State (2006 MLD 530)*, case of *Atif Khan vs The State (2006 MLD 532)*, case of *Lal Bux vs The State (2008 YLR 926)*, case of *Zaheer Ahmed vs The State (2008 YLR 731)*.

5. Learned Addl.P.G opposes the bail application on the ground that applicant was arrested by the police on spot alongwith weapon and the offence carries maximum punishment; therefore, he does not deserve any leniency for his release on bail.



6. Heard arguments and has perused the record.

7. No doubt, the applicant has been arrested by the police on spot along with a pistol but the allegation against him is that he allegedly deterred the police whilst they were performing official duties by making firing upon them aims to commit their Qatl-e-amad. It is also matter of record that none from the police personnel had sustained any injury or even scratch therefore, applicability of Section 324 PPC is yet to be established by the prosecution after recording evidence of its witnesses. As far as, deterrence in performance of their lawful duties is concerned, none had received injury on their person hence, it is also yet to be established by the prosecution whether the applicant had made fire upon the police party on account of unsuccessful hit to anybody, on the contrary co-accused had succeeded in making their escape good. In such eventuality and in absence of any injury caused to the member of police party it cannot be conclusively held that the applicant is involved in any alleged encounter with the police. In case of *Qurban Ali (supra)*, the accused therein were arrested in an injured condition along with robbed property but none from the police had sustained any injury or even scratch or hit to their vehicle even then bail was granted. In case of *Qurban Ali (supra)* accused were granted bail by learned bench of this Court. It will be appropriate to reproduce concluding para from the order passed by this Court in case of *Qurban Ali and another vs the State (supra)* which reads as under:-

*"It is strange that in an encounter involving three culprits and a police party consisting of about eight police personnel and specially when such firing was initiated by the culprits none from the police party received any injury nor their vehicle was hit by a single bullet whereas only the applicants and their deceased accomplice received injuries and it was only their motorcycle and gun that was hit by bullets. Although arms and ammunition have been recovered in the incident however, the same have not been sent to a Ballistic Expert so as to show, whether the weapons allegedly recovered from the applicant and the deceased co-accused were functional and whether the bullets secured from the scene were fired from such weapon. The applicant is in custody since 14.10.2004 and the recording of evidence has not yet commenced. In the circumstances I am inclined to grant bail to the applicants. The applicants are admitted to bail subject to*

*their furnishing surety each in the sum of Rs.200,000 and executing P.R. bond in the like amount to the satisfaction of trial Court."*

8. It is well settled principal of law that every accused would be presumed to be blue eyed boy of the law until and unless he may be found guilty of alleged charge and law cannot be stretched upon in favour of the prosecution particularly at bail stage. In instant case, the prosecution has to establish its charge and then the trial Court has to determine the guilt as well accusation against the applicant.
9. In view of above legal position, I am of the considered view that case against applicant requires further inquiry within the meaning of Sub-section (2) of section 497 Cr.P.C. Accordingly, instant bail application is hereby allowed. The applicant shall be released on bail subject to furnishing his solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand) and PR bond in the like amount to the satisfaction of learned trial Court/ Magistrate where the case against him is pending for trial.
10. However, the observation made hereinabove are tentative in nature and shall not cause any effect to either party.

~~JUDGE~~