

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Bail Application No.S-171 of 2023

Applicant: Syed Fida Hussain Shah son of Syed Anwar Shah, through M/s. Muhammad Nawaz B. Jamali and Imtiaz Ali Ansari, Advocates.

Respondent: The State through Ms. Rameshan, Assistant Prosecutor General, Sindh.

Date of hearing: **20.03.2023**

Date of Order: **20.03.2023**

O R D E R

AMJAD ALI SAHITO, J:- Through the instant criminal bail application, the applicant above named seeks his post-arrest bail in Crime No.99 of 2022, under sections 302, 506(ii), 337-A(i) and 34 P.P.C, registered at P.S Taluka Nawabshah, after his bail plea was declined by the learned 1st Additional Sessions Judge / Model Criminal Trial Court, Shaheed Benazirabad, vide order dated 26.01.2023.

2. The details and particulars of the F.I.R. are already available in the bail application and crime report, same could be gathered from the copy of F.I.R. attached with such application, hence needs not to reproduce the same hereunder.

3. Per learned counsel for the applicant that the name of applicant / accused transpires in the FIR but no specific role has been assigned against him however on the basis of his mere presence he has been implicated in this case. He further contended that after completion of investigation challan has been submitted in the Court of law, as such, the custody of applicants are no more required for further investigation.

4. On the contrary, learned Assistant Prosecutor General, Sindh vehemently opposed the grant of bail however she admits that the role of applicant's presence at place of occurrence has been shown in the F.I.R.

5. I have heard learned counsel for the parties and gone through the material available on the record.

6. No doubt the name of the applicant/accused transpires in the F.I.R with the allegation that he being armed with pistol entered into the house of complainant but no specific role has been assigned to him that he has caused any injury to the deceased in the commission of alleged offence. In the case of *Qurban Ali v. The State and others (2017 SCMR 279)*, the Honourable Supreme Court of Pakistan had granted bail to the accused who had not been attributed any overt act during the occurrence except the role of raising 'lalkara'. Trial Court in such circumstances had to determine, after recording pro and contra evidence, whether the accused was vicariously liable for the acts of his co-accused. Case against accused was one of further enquiry. In another case of *Mumtaz Hussain and 5 others v. The State (1996 SCMR 1125)*, the bail was granted to accused on the ground that despite being allegedly armed with deadly weapons like rifle, gun and hatchet only caused simple blunt injuries to some of the prosecution witnesses using the wrong side of their weapons. Question whether the accused in such situation shared his common intention with co-accused who had caused death of the deceased needed further inquiry. Applicant/accused is in jail his further detention will not improve the prosecution

case as challan of the case has been submitted, hence he is no more required for further investigation. Learned counsel for the applicant/accused has made out a case for grant of post-arrest bail in view of sub-section (2) of section 497 Cr.P.C, resultantly the instant bail application is allowed and the applicant/accused Syed Fida Hussain Shah is admitted to bail subject to his furnishing solvent surety in the sum of Rs.100,000/- and P.R. bond in the like amount to the satisfaction of learned Trial Court.

7. Needless to mention here that the observations made hereinabove are tentative in nature would not influence the learned Trial Court while deciding the case of either party at trial.

*Muhammad Danish**

JUDGE