

# IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

CrI. Bail Application No.S- 287 of 2023

Applicant : **Jan Sher Dahraj** through Mr. Shahab Sarki, Advocate.

Complainant : **Manzoor Ali** through Mr. Ghulamullah Memon, Advocate.

The State : Through Mr. Shafi Muhammad Mahar, Deputy Prosecutor, General.

Date of Hearing : **16<sup>th</sup> June, 2023**

Date of Decision : **23<sup>rd</sup> June, 2023**

## ORDER

**Omar Sial, J.**: Manzoor Ali Chohan on 04.07.2021 at 1230 hours lodged an F.I.R No. 66 of 2021 at the Mohabat Dero police station in Naushero Feroze under sections 302 and 201 P.P.C. He recorded that he has 3 siblings out of whom the youngest was named Shah Nawaz, who worked at a petrol station owned by Jan Sher Khan Dehraj son of Abdul Ghaffar Dehraj. A few days ago Shah Nawaz had left his employment, which had angered the owner and his father. On 30.06.2021, the complainant and Shah Nawaz were at home in the company of another son, Ihsan, and uncle Zulfiqar when 2 persons by the name of Akhtiar Ali Solangi and Anwer Ali Kandhro, said to be close aids of Abdul Ghaffar Dehraj, came to their home along with 3 other unidentified persons. The visitors told the complainant that Shah Nawaz had been summoned by the Dehraj father and son duo. The complainant declined to let Shah Nawaz accompany them however upon their insistence the 4 men of the complainant party present at home all decided to go to the Dehraj home. From there Shah Nawaz left on a vehicle in the company of Jan Sher Khan, Abdul Ghaffar, Akhtiar Ali, Anwar Ali and 3

other men who were unidentified. The complainant through his own undisclosed sources was told that all the men had gone to another home of Abdul Ghaffar. The complainant went to that home and was told that Shah Nawaz will return after 2 days. On 03.07.2021 the tortured body of Shah Nawaz was found within the jurisdiction of the Mehar police station (about 120 kms away from the home of Abdul Ghaffar, where ostensibly Shah Nawaz was last seen). The F.I.R. was registered against Jan Sher Khan, Abdul Ghaffar, Akhtiar Ali, Anwar Ali and 3 other men who were unidentified.

2. All the accused except Jan Sher Khan were granted bail by the learned Sessions Judge, Naushero Feroze. Jan Sher made 3 applications before the learned trial court seeking bail however all 3 were dismissed. The latest dismissal was vide order dated 26.04.2023. Jan Sher has now approached this Court seeking post arrest bail.

3. I have heard the learned counsel for the applicant and the learned APG who was assisted by the learned counsel for the complainant. Their respective arguments are reflected in my observations and findings below.

4. Upon a query from the learned counsel for the complainant as to how Jan Sher was not entitled to bail based on the rule of consistency as the role assigned to all the accused, including the ones admitted to bail, appeared to be similar, learned counsel replied that Jan Sher cannot be given the benefit of consistency as 2 witnesses by the name of Mazhar Ali and Ayaz Ali had recorded statements under section 161 Cr.P.C. that they had seen Abdul Ghaffar and Jan Sher beating Shah Nawaz with sticks. I have gone through the statements recorded by Mazhar and Ayaz and upon a tentative assessment find a number of areas in the statements, in particular, their reasons to be on the lands of Abdul Ghaffar, when they say that they had made the sighting. The fact that the statements were recorded after one month of the incident

also creates doubt at this preliminary stage as to whether the statements were designed to implicate the accused. The reason given subsequently by these 2 witnesses for the delay was that they were afraid of Abdul Ghaffar. Why were they afraid of him was not elaborated upon as they seem to be not even living in the same neighborhood or village. Learned counsel however did cite a judgment reported as **Abdul Aziz vs Saleh Mohammad and another (1990 SCMR 346)** to justify that the delay in recording statements cannot be taken into consideration at the bail stage. With much respect and humility, research on this aspect shows that the Supreme Court of Pakistan in a number of subsequent judgments has enunciated the principle that delay in the recording of section 161 Cr.P.C. statements without a cogent and plausible reason for the delay, reduces their evidentiary value to zero. One such case is **Noor Mohammad vs The State (2020 SCMR 1049)** which was also a case for bail. Another such case is reported at **Sajid Hussain alias Joji vs The State (PLD 2021 SC 898)** which was also a case of bail. Apart from this inordinate delay in recording their statements, the statements in themselves also reflect an exactly similar role of both the Dehraj's. Learned counsel has been unable to explain as to how consistency will not apply.

5. Another argument raised by the learned counsel for the applicant was that Jan Sher was entitled to bail as he had been declared a proclaimed offender earlier. After reviewing the record however the learned counsel acknowledged that no proceedings under section 87 and 88 Cr.P.C. were conducted against Jan Sher nor was a proclamation of his being an offender made. It is true that the record prima facie reflects that Jan Sher was arrested nearly one year after the registration of the F.I.R. but it is also true that absconsion will not impact an accused if otherwise he makes out a case for bail on merits.

6. The third argument made by learned counsel was that during the period Jan Sher was not arrested, he and his accomplices kidnaped a witness Ahsan Ali. This F.I.R. bearing number 98 of 2021 was registered on 25.09.2021 on the complaint of one Zulfiqar Ali who was a brother of the complainant in the present F.I.R. I have refrained from commenting on the statement recorded by Ahsan Ali after his recovery so that the case of either party is not impacted. Suffice to say that the Jan Sher was granted bail in that crime vide order dated 14.06.2022 by the learned 3<sup>rd</sup> Judicial Magistrate, Kandiaro in which order the learned judge has observed that the statement made by Ahsan Ali was not satisfactory. One of the observations that the learned judge made was that the recovery of Ahsan Ali in the manner it was made creates massive doubt regarding the truth of his story of kidnapping. Be that as it may, the learned trial court in that crime will no doubt reach the correct decision after evidence is led at trial. I am not satisfied that the applicant's alleged involvement in that case is ground to decline him bail in the present crime.

7. The record also reflects that the complainant has in a piecemeal manner nominated accused in this F.I.R. On 12.07.2021 and then on 07.09.2021, he included the names of Khalid Maqsood and Ansar Ali as accused. Both were granted bail by the learned 1<sup>st</sup> Additional Sessions Judge, Naushero Feroze. Upon a tentative assessment it seems that the complainant has been fishing and roving to include people as accused in the present crime. The emergence of Mazhar Ali and Ayaz Ali as witnesses one month after the crime also appears to be prima facie an afterthought.

8. Prima facie it appears that the medical report does not reconcile with the prosecution case as far as the doctor's opinion regarding the time of death is concerned. The post mortem was conducted on 03.07.2021 between 2:30 p.m. and 4:30 p.m. and the doctor opined

that the time between death and post mortem was 24 to 30 hours. Keeping in view that the 2 supposed eye witnesses saw Shah Nawaz being beaten in the evening of 30.06.2021, either the doctor has gone away of the mark or the true facts of the matter have been suppressed. It will be at trial when the doctor steps into the witness box that this aspect will require clarification.

9. In view of the above observations the case against the applicant appears to be one of further inquiry. He is also entitled to bail on the ground of consistency. He is therefore admitted to post arrest bail subject to his furnishing a solvent surety in the sum of Rs. 500,000 and a P.R. Bond in the like amount to the satisfaction of the learned trial court.

**JUDGE**