

ORDER SHEET

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Cr. Bail App. No. D – 72 of 2023**

Date of hearing	Order with signature of Judge
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Present:

**Mr. Muhammad Iqbal Kalhoro, J.**

**Mr. Arbab Ali Hakro, J.**

**For hearing of bail application**

1. For orders on office objections at Flag-A
2. For hearing of main case

**12.10.2023**

Mr. Qurban Ali Malano assisted by M/s Israr Ahmed Shah and Syed Naimat Ali Shah, Advocate for applicant/accused.  
Mr. Shoukat Ali Bohio, Advocate for complainant.  
Mr. Zulfiqar Ali Jatoi, Additional Prosecutor General.

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**Muhammad Iqbal Kalhoro, J.** – Applicant arraigned in Crime No.177 of 2023, registered at Police Station Mehar under Sections, among others, 302 PPC and 6/7 of Anti-Terrorism Act, 1997, has applied for post-arrest bail by means of this application.

2. The incident, as per brief facts in FIR, pertains to murder of three (03) persons, namely Abdul Sattar, Zahid and Mehboob, brother and cousins of complainant on 26.05.2023 at about 09:15 a.m., FIR of which was registered on the same day at about 01:00 p.m. (1300 hours). The place of incident is inside premises of Additional Sessions Court, Mehar, where all the deceased were brought in police custody to face a trial registered by accused party against them in the said Court. It is revealed that applicant along with ten (10) other accused, duly named in FIR, came inside the premises of the said Court duly armed with weapons, and on account of a previous enmity, directly fired upon the deceased and one Police Constable when he tried to resist applicant and other accused from committing the offence. The role assigned to applicant is that he along with co-accused Yousuf and Dost Muhammad fired from his pistol on brother of complainant, namely Abdul Sattar, causing him multiple firearm injuries on his face and other parts of body, which proved fatal and he died at the spot. Insofar as the death of remaining two deceased is concerned, other co-accused, named in the FIR, have been assigned critical role of murdering them by causing them firearm injuries.

3. Learned defence Counsel, in his arguments, has relied upon the cases of Muhammad Arshad and another v. The State through P.-G., Punjab and others (2019 SCMR 572), Khair Muhammad and another v. The State through P.G. Punjab and another (2021 SCMR 130), Abdul Rehman alias Muhammad Zeeshan v. The State and others (2023 SCMR 884) and Muhammad Imran v. The State and others (2023 SCMR 1152), and has stated that on the day of incident, the applicant had left for Dubai and was not present in Pakistan. He has been falsely implicated in this case on account of enmity admitted in the FIR, and in interim report, he was declared innocent by Investigating Officer, but later on, in the final Challan was referred to the Court for a trial as accused. In support of his contentions, he has placed on record for a perusal original passport of applicant, boarding pass and air ticket dated 26<sup>th</sup> May 2023, which after this order have been returned to him through Reader of this Court.

4. On the other hand, learned Counsel for the complainant has opposed contentions raised in defence by relying upon the cases of Raza Mohsin Qazilbash and others v. Muhammad Usman Malik and another (1999 SCMR 1794), Ranjho v. The State (2000 P Cr. L J 674), Shoukat Illahi v. Javed Iqbal and others (2010 SCMR 966), Ghulam Ahmed Chishti v. The State and another (2013 SCMR 385) and Muhammad Yahya v. The State (2016 P Cr. L J Note 66). Learned Additional Prosecutor General has also opposed bail to applicant by relying upon the case law reported as **2012 SCMR 707**.

5. We have considered respective pleas of the parties and taken guidance from the case law cited at bar. Applicant is named in the FIR with specific role of causing firearm injuries to brother of the complainant, namely Abdul Sattar, which, as per postmortem report, proved fatal and he died. Apart from deceased Abdul Sattar whose murder has been directly attributed to applicant, two other young persons, namely Zahid and Mehmood, were also done away with on the day in the same incident by the co-accused, who were in the company of applicant. The specific role assigned to applicant has further been, *prima facie*, verified by the witnesses in their statements recorded U/S 161 CrPC. The medical evidence also appears to be in conjunction with the oral account furnished by the complainant and other witnesses. Insofar as plea of alibi taken

by the applicant or the fact that he left Pakistan for Dubai on the same day is concerned, a perusal of report U/S 173 CrPC shows that this plea was not taken by the applicant before Investigating Officer, who, while revealing the account of investigation, has narrated that applicant Shah Nawaz had obtained protective bail from Quetta High Court and appeared. No reference to plea of alibi has been made by the Investigating Officer in the investigation report.

6. But, be that as it may, the incident occurred in the downtown of Mehar, within the premises of Sessions Court at about 09:15 a.m. The departure time of applicant for Dubai is recorded in the boarding pass as 1915 hours and his boarding is recorded at 06:50 p.m. (1850 hours) after about 09 hours of the incident. It is well known that the drive from Mehar to Karachi will take hardly 04 to 05 hours. By this calculation, a person can reach Karachi Airport from Mehar maximum at about 02:00 p.m. and would have more than four (04) hours to report boarding at the airport. This extrapolation, *prima facie*, shows that a person, after committing offence in Mehar, can easily reach Karachi Airport and leave Pakistan. Therefore, this plea of alibi, *prima facie*, does not appear to be appealable and sustainable in view of above and cannot be counted as a sufficient ground to discount the oral account of the witnesses specifically nominating involvement of the applicant in the murder of three persons. More so, these facts require deeper appreciation of evidence, which cannot be undertaken at this stage.

7. We, therefore, find no cogent ground to allow this application, which is accordingly **dismissed**. However, the trial Court is directed to expedite the trial and examine the eyewitnesses preferably within a period of three (03) months, after which in any case, applicant shall be competent to file a fresh application before the trial Court for a consideration in accordance with law.

8. The observations, as above, are tentative in nature and not meant to affect merits of the case before the trial Court.

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