

Order Sheet  
**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

Cr. B.A. No. S- 964 of 2023  
[Sabhago V/S The State]

Cr. B. A. No. S- 983 of 2023  
[Dhani Bux V/ S The State]

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DATE	ORDER WITH SIGNATURE OF JUDGE
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16.10.2023

For orders on office objections  
For hearing of main case

Masood Rasool Babar Memon, Advocate for applicants  
Mehmood Alam Abbasi, Advocate for complainant  
Mr. Siraj Ahmed Bijarani, A.P.G.

**ADNAN-UL-KARIM MEMON, J.-** Through these Bail Applications applicant Sabhago seeks pre arrest bail, whereas applicant Dhani Bux seeks post-arrest bail in FIR No. 136 of 2023 registered at police station A-Section Tando Allahyar under Section 302, 201 PPC. Earlier their bail plea was declined by the trial court vide common order dated 29.08.2023 on the premise that the names of applicants / accused were disclosed by co-accused Jahanzaib @ Babloo at the time of pointing the place where he buried the dead body of deceased Mst. Zara Kanwal.

2. The case against the present applicants is that they in connivance with the main accused caused disappearance of evidence of the alleged offence of murder of Mst. Zara Kanwal w/o co-accused Jahanzaib @ Babloo. Such report of the incident was given to the police on 12.05.2023 though the alleged offence took place on 17.04.2023.

3. It is contended that the applicants have falsely been implicated in this case by the complainant; there is apparent malafide on the part of complainant and police ; that the applicants were not nominated in the FIR and were implicated subsequently merely on the basis of confessional statement of co-accused; it is well-settled that the concession of bail cannot be declined on such ground; there is no independent and / or incriminating evidence against the applicants, therefore, the matter requires further inquiry ; the applicants have no previous criminal record ; the final charge sheet has been submitted before the trial Court; and, there is no apprehension that the evidence will be

tampered with or the witnesses will be influenced by the applicants, or they will abscond if admitted to bail. Learned counsel further argued that there is no eye-witness of the alleged incident and the applicants have falsely been booked on the allegations of causing disappearance of evidence of alleged offence, which is punishable under Section 201 PPC which is bailable offence. He relied upon the cases of Waqas Ahmed V/S The State and another (2022 YLR 568), Shoukat Ali V/S Touqeer Ahmed & others (2020 YLR Note 80), Gul V/S The State (2018 YLR Note 226), Nisar Khan V/S The State (2017 P.Cr.L.J Note 101), Abdul Ghaffar V/S The State (2017 YLR 692), Nehrasit Khan V/S The State and another (2021 YLR 275), Arjamand Shahzadi and another V/S The State and another (2019 P.Cr.L.J 569) and Faisal Ahmad V/S The State and another (2018 YLR 1269).

4. On the other hand learned counsel for the complainant submits that the applicants have specifically been implicated by the main accused and in view of Article 43 of the Qanoon-e-Shahdat Order, 1984, his statement cannot be ignored or discarded. The allegations of enmity and malice have been denied by the counsel for complainant. Likewise, malice on the part of police has been denied by learned Addl. P.G. however, they concede that no recovery was made from the arrested applicant; there is no independent evidence against the applicants; the investigation in this case has been completed; and, final charge sheet has been submitted before the trial Court. Per learned counsel in such situation, the applicant/accused ought not have helped out the co-accused Jahanzaib @ Babloo and they should have informed the police but they did not do so and buried the dead body of deceased and remained silent for considerable period which prima-facie show their complicity in the subject crime.

5. Heard learned counsel for the parties and perused the material available on record and the case law cited at bar.

6. The entire case of the prosecution rests upon the factum that the applicants helped the main accused Jahanzaib @ Babloo in burying the dead body of deceased Mst.Zara Kanwal; and, upon the statement of co-accused the applicants were booked in the present case in which one of the accused namely Dhani Bux was arrested whereas the applicant Sabhago has approached this court for grant of pre-arrest bail. Since the role of both the applicants is same, as such both the bail applications are taken up together and heard.

7. Tentative assessment of record reflects that the names of applicants were disclosed by co-accused Jahanzaib @ Babloo at the time of pointing out the place where he buried the dead body of deceased Mst.Zara Kanwal. Besides, the FIR is delayed for about 25 days. It appears that there is hearsay evidence against the present applicants / accused, while it is yet to be determined if they are involved or not, which is possible only after recording of evidence by the trial Court. The Supreme Court in the cases of *The State through Director Anti-Narcotic Force, Karachi v. Syed Abdul Qayum* (2001 SCMR 14), *Ahmed Ali V/S The State* (2021 SCMR 470), *Aqsa Safdar V/S The State* (2019 SCMR 1923), *Muhammad Shafi V/S The State* (2016 SCMR 1593), *Raja Muhammad Younas V/S The State* (2013 SCMR 669), *The State V/S Syed Abdul Qayum* (2001 SCMR 14), *Farman Ali V/S The State* (1997 SCMR 971), and *Muhammad Waseem V/S The State* (2012 SCMR 387), while dilating upon the evidentiary value of the statement of co-accused made before the police in the light of Article 38 of Qanun-e-Shahadat Order, 1984, inter alia, held that the statements of co-accused recorded by police during investigation are inadmissible in evidence and cannot be relied upon. It would not be out of place to mention here that the evidence of an accomplice is ordinarily regarded suspicious; therefore, extent and level of corroboration has to be assessed keeping in view the peculiar facts and circumstances of the case.

8. Record shows that the applicants / accused are neither previous convict nor hardened criminal. Moreover, the applicant / accused Dhani Bux has been in continuous custody since his arrest and is no more required for any investigation nor the prosecution has claimed any exceptional circumstance, which could justify keeping him behind the bars for an indefinite period pending determination of his guilt. It is well settled that while examining the question of bail, court has to consider the minimum aspect of sentence provided for the alleged offence. From the tentative assessment of evidence, it appears that there is hearsay evidence against the present applicants/accused, while it is yet to be determined if they are involved or not, which is possible only after recording of evidence by the trial Court.

9. In view of the peculiar facts and circumstances of the case, I am of the opinion that prima facie, the applicant / accused Dhani Bux has succeeded to bring his case within the purview of further inquiry and as such he is entitled to post arrest bail. Accordingly, he is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees one hundred

thousand only) and P.R. bond for the same amount to the satisfaction of trial Court.

10. So far as applicant Sabhago is concerned, he has pleaded that he has approached this Court for grant of pre-arrest bail under Section 498 Cr. P.C on the premise that the role of applicant has been assigned by the co-accused in his statement during investigation, which is against the essence of Articles 38 & 39 of the Qanun-e-Shahdat Order 1984, however, his role has not been described in the subject FIR; and, he has been booked under Section 201 PPC, which factum is based on the malice of police; however at the same time it cannot be ignored that pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail. However, based on the aforesaid facts and circumstances of the case coupled with the reason that co-accused Dhani Bux has been admitted to post arrest bail in the same crime, and his case is on the same footing with a little bit difference of post arrest and pre-arrest bail issue as such he is also entitled to pre-arrest bail on the analogy that complainant has only booked him in the present case based on the statement co-accused. As such the interim pre-arrest bail already granted to applicant Sabhago vide order dated 4.9.2023 is confirmed on the same terms and conditions.

11. Needless to mention here that any observation made in this order is tentative in nature and shall not affect right or either party at trial or influence the trial Court in reaching its decision on merits. It is, however, made clear that in the event if, during proceedings, the applicants/accused misuses the bail, the trial Court would be competent to cancel without making any reference to this Court.

JUDGE