

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No. S-412 of 2023

1. For orders on office objection at Flag 'A'.
2. For hearing of bail application.

23.10.2023.

Syed Murad Ali Shah, Advocate, for the Applicant
Nayab Akhtar Memon, Advocate, for the Complainant
Khalil Ahmed Memon, DPG

ORDER

YOUSUF ALI SAYEED J. – Having remained unsuccessful before the learned 1st Additional Sessions Judge-(MCTC) Khairpur, the Applicant has approached this Court seeking that he be enlarged on bail in respect of Crime No.122/2020 registered on 16.06.2020 at Police Station B-Section, Khairpur on the complaint of one Zulfiqar Ali, in relation to alleged offences under Sections 302, 324, 148 and 149 PPC said to arise out of an armed attack perpetrated by the Applicant in concert with others earlier that day, causing injuries to several persons and the death of the complainant's brother.

2. Learned counsel for the Applicant has been heard; as has the learned DPG, assisted by counsel for the complainant.

3. A perusal of the Order made by the learned Additional Sessions Judge on 12.01.2021 reflects that the earlier post-arrest bail application was dismissed as it was observed that:

“According to FIR, the applicant/accused Abdul Qadir is nominated in FIR with specific role that he along with co-accused fired from his K.K upon deceased Dilber (brother of complainant) on his right check through and through and he died on spot, while Shahbaz Dino (uncle of complainant) is also shown to be injured during commission of offence, thus he has played active role of causing fire arm injuries to deceased on his vital part of body which also supported by the medical certificate. From perusal of police papers, the P.Ws in their respective statements u/s 161 Cr.P.C have fully supported the version of complainant and implicated applicant/accused. It is also admitted position that offence with which applicant/accused is charged falls within the ambit of prohibitory clause of Section 497 Cr.P.C. Moreover, during investigation the crime weapons viz. K.K has also been recovered from possession of applicant/accused Abdl Qadir. According to post mortem report, the death of deceased occurred due to fire arm injuries, thus the medical evidence is in line with ocular account and supports the version of complainant. The motive of committing murder of deceased has been shown to have caused due to matrimonial affairs, as such accused persons committed qatl-i-Amd of deceased. Thus from tentative assessment as well as at this stage there is sufficient material available on record for connecting the applicant/accused Abdul Qadir s/o Sardar Khan Jagirani in commission of alleged offence.”

4. As such, it is apparent that the court of first instance has assigned cogent reasons for observing that there was sufficient material on record to suggest an active role of the Applicant in the commission of the alleged offence, and refusing the concession of bail.

5. An examination of the matter does not reflect any error or infirmity in that assessment, and learned counsel for the Applicant remained at a loss to highlight any lapse or otherwise point to any material to support a contrary view from that taken by the *fora* below.

6. Indeed, in the case reported as *Sidra Abbas v. The State* and another 2020 SCMR 2089, it was observed by the Supreme Court that:

“...one thing which is to be kept in mind is that in cases where the Court of first instance has through a reasoned order refused concession of bail to an accused in non-bailable cases, then the Court of Appeal while reversing such order cannot simply ignore the reasoning which prevailed with the Court of first instance while refusing the concession of bail. The Court of appeal of course exercises concurrent jurisdiction and has all the powers to review such orders by taking a different view on the same facts if it finds that the Court of first instance in the circumstances of the case has failed to exercise its discretion in accordance with the principles settled by this Court by unnecessarily withholding such concession. However, the Court while reviewing such order should not simply ignore the reasoning prevailed with the Court for declining bail. There is no cavil that discretion should be liberally exercised in favour of accused but not to an extent to render the provisions of Section 497 Cr.P.C. as redundant.”

7. It is for the foregoing reasons that the Application at hand was dismissed vide a short Order made in Court upon culmination of the hearing on 23.10.2023. Needless to say, the observations made hereinabove are tentative, so as to have no bearing or influence on the outcome of the trial.

JUDGE