

ORDER SHEET

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD.**

Cr. Bail Application No. S — 274 of 2023.

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DATE	ORDER WITH SIGNATURE OF JUDGE
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FOR HEARING OF MAIN CASE.

Date of Hearing: 26 July 2023.

Applicants: Irshad Ali & others through Mr. Mian Taj Muhammad Keerio Advocate.

Complainant: Through Mr. Parvaiz Ahmed Pirzada Advocate.

Respondent: The State through Mr. Shahid Ahmed Shaikh, Additional P.G. & Mr. Siraj Ahmed Bijarani A.P.G. for the State.

**ORDER**

**MOHAMMAD ABDUR RAHMAN, J.-** This is an Application under Section 497 of the Code of Criminal Procedure, 1898 that has been filed by the Applicant seeking Post Arrest Bail in Crime No. 26 of 2022 in respect of the offences committed under Section 302, 324, 337-A(i), 337-F(i), 337-H(ii), 504, 506, 147, 148, 149 of the Pakistan Penal Code 1860.

2. The Applicants had previously maintained Bail Application No. 73 of 2023 before the 1st Additional Sessions Judge / Model Criminal Trial Court Umerkot which was dismissed by that court on 20 March 2023.

3. The facts as stated in the FIR are that on 26 July 2022, at a shop of one Vino Kolhi situated at Village Ibrahim Rind, Deh Berani, Taluka Kunri the Applicants, along with co-accused Irshad Ali son of Allah Bux, Gul Muhammad and Ali Muhammad on two motorcycles approached the complainant Muhammad Usman and had an altercation which led to the incident where by the accused and the co-

accused opened fire on Muhammad Usman (the Complainant), Ghulam Abbas (the nephew of the Complainant) and Gul Bahar (the son of the Complainant).

4. The role assigned to each of the accused and the co-accused in the FIR is as under:

- (1) Gul Muhammad son of Wassayo fired upon the complainant Muhammad Usman causing a bullet to hit him on his ear and shoulder;
- (2) Jawed shot at Gul Bahar which hit him on his right leg;
- (3) Ali Muhammad shot at Gul Bahar son of Muhammad Usman but missed and which bullet hit Gul Muhammad son of Wassayo on his arm;
- (4) Irshad Ali son of Gul Muhammad shot at Ghulam Abbas and which resulted in Ghulam Abbas's demise.

5. Mr. Taj Muhammad Keerio, Advocate for the Applicants states that the Applicant and the Complainant have each registered counter FIRs against each other. He further contends that one of the co-accused in Crime No. 26 of 2022 i.e. Gul Muhammad son of Wassayo application for bail had been rejected by this Court in Criminal Bail Application No. S-1126 of 2022 and against which Criminal Petition No.1557 of 2022 was preferred before the Supreme Court of Pakistan and which was heard on 9 February 2023. He stated that the decision of the Supreme Court of Pakistan was reported as **Gul Muhammad vs The State**<sup>1</sup> and while granting bail it was held that:<sup>2</sup>

“ ... 5. We have heard learned counsel for the parties at some length and have perused the available record with their able assistance.

*As per the contents of the crime report, the allegation against the petitioner is that he while armed with pistol .30 bore launched an attack on the complainant party and made straight fire from his pistol on the complainant, which hit on his ear and shoulder. However, it is stance of the petitioner that in-fact the complainant party while armed with firearms came at his village, attacked on him and caused injury on his left arm, due to which his left arm has been amputated. The medical evidence available on record prima facie supports the stance of the petitioner. The petitioner has also got registered a counter FIR*

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<sup>1</sup> 2023 SCMR 857

<sup>2</sup> *Ibid* at pg. 858

bearing No. 27/2022 under sections 324/506(ii)/114/337-F(i)/337-H(2)/504/34, P.P.C. at Police Station Nabir Sir Road, District Umerkot against the complainant party. In the instant case, the crime report was lodged after an inordinate delay of two days for which not even a single word has been put forward by the complainant. The delayed registration of FIR prima facie shows deliberations and consultation on the part of the complainant. According to Medico Legal Report of the injured PW Usman, the injuries on his person have been declared as ghayr jaifahmutalahimah and shajjah-ikhafifah falling within the ambit of sections 337-F(iii) and 337-A(i), P.P.C. for which the maximum punishment provided under the statute is three and two years respectively. However, we do not want to comment on this aspect of the matter, lest it may prejudice the case of either of the party before the Trial Court. It is the Trial Court who after recording of evidence would decide about the guilt or otherwise of the petitioner and as to whether section 324, P.P.C. is applicable or not. The petitioner is behind the bars for the last more than five months. This court has time and again held that liberty of a person is a precious right, which cannot be taken away unless there are exceptional grounds to do so. Merely on the basis of bald allegations, the liberty of a person cannot be curtailed. In these circumstances, the petitioner has made out a case for bail as his case squarely falls within the purview of section 497(2), Cr.P.C. entitling for further inquiry into his guilt.

6. Counsel for the Applicants stated that the Applicant No. 2 and the Applicant No. 3 were both entitled to bail on the rule consistency on the following basis:

- (i) With regard to the role of Hussain Bux i.e. the Applicant No.3, he stated that Hussain Bux had no role assigned to him the FIR; as compared with Gul Muhammad son of Wassayo, who had actually discharged a fire arm causing injury, Hussain Bux had not committed any act at all which had caused any injury to any person. He further contended that as the Supreme Court of Pakistan had granted bail to Gul Muhammad son of Wassayo and as role attributed to Hussain Bux in the FIR was less than that assigned to Gul Muhammad son of Wassayo the concession of bail must be extended to him.
- (ii) He contended that Javaid i.e. the Applicant No. 2 has a similar role assigned to him in the FIR as compared to Gul Muhammad son of Wassayo in that they both discharged a fire arm causing injury i.e. Gul Muhammad son of Wassayo action had resulted in Muhammad Usman being hit on the ear and on the shoulder while Javaid action had resulted in Gul Bahar being hit on the leg. He contended that as

the Supreme Court of Pakistan had granted bail to Gul Muhammad son of Wassayo and as the role attributed to Javaid in the FIR was similar to that assigned to Gul Muhammad the concession of bail must be extended to him.

7. Mr Taj Muhammad Keerio, while conceding that the role of Irshad Ali i.e. the Applicant No. 1 is greater than that of the other two Applicants, he states that since the Supreme Court of Pakistan has categorically stated that Gul Muhammad son of Wassayo was not the aggressor in similar like the accused should also not be considered as the aggressors. He further states that the Supreme Court of Pakistan has noted that the FIR was registered after an “inordinate” delay of two days and which keeping mind the nature of the incident should be treated as a case of further inquiry as it prima facie showed deliberations and consultations on the part of the Complainant prior to lodging the FIR. Mr. Keerio argued that as the Supreme Court of Pakistan in **Gul Muhammad vs The State**<sup>3</sup> had held that there was inordinate delay in the filing of the FIR, this Court must apply the same principle and grant bail on this ground independent of the rule of consistency to all three accused.

8. Mr. Parvaiz Ahmed Pirzada, Advocate for the Complainant submitted that he conceded to bail being granted to Hussain Bux on the rule of consistency as clearly the role assigned to him in the FIR was far less then the role assigned to Gul Muhammad and to whom the Supreme Court of Pakistan had granted bail. However, in respect of the other two co-accused Jawed and Irshad Ali as the role assigned to them in the FIR. was greater, the rule of consistency could not be applied. He submits that while Ghulam Muhammad son of Wassayo was said to have shot at and injured Muhammad Usman by shooting him on his ear and shoulder, Irshad Ali had caused the death of Ghulam Abbas while Jawed role in the FIR was of having shot Gul Bahar on his right leg. With regard to the inordinate delay of two days in registering the FIR he has stated that the FIR was registered at

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<sup>3</sup> 2023 SCMR 857

the time when the Complainant had been in the Hospital having been shot at by the accused and all the other persons who could have also registered the FIR had also been injured and were in Hospital and could have not registered the FIR. He stated that this Court should take into account that no finding was made by the Supreme Court of Pakistan on this issue and consider this fact afresh when determining as to whether or not this is case of further inquiry or not. He relied on decision of this court reported as **Anwar Ali Khaskheli vs. The State**<sup>4</sup> where the accused after having first robbed the deceased had thereafter murdered him and thrown his body in a drain and in which the Court held that a delay of four days in lodging of the FIR, when compared against the “heinous” nature of the offence committed by the accused, can be overlooked. He also relied on a decision of the Supreme Court of Pakistan reported as **Mumtaz vs. The State**<sup>5</sup> in which it was held that even if there was a conflict between the medial evidence and the ocular evidence as there was sufficient evidence to connect the FIR to the offence bail had been refused. He finally relied on a decision reported as **Muhammad Nawab vs. The State**<sup>6</sup> which held where the role of accused had been specifically identified in the FIR and which was corroborated with eye witnesses where the offence fell within the prohibitory clause of Section 497 of the Code of Criminal Procedure, 1898, then bail should be refused.

9. Mr. Shahid Ahmed Shaikh Additional P.G. submits that in light of decision of Supreme Court in Criminal Petition No.1557 of 2022 reported as **Gul Muhammad vs The State**<sup>7</sup> prima facie the role of Hussain Bux being less than that of Gul Muhammad, inasmuch as no specific role has been assigned to him in the FIR, a case of bail may have been made out. However, with regard to Irshad Ali and as to the role of Jawed he states that their roles are greater than that of Gul Muhammad son of Wassayo and the rule of consistency could not be applied to them. In respect of the findings of Supreme Court of Pakistan he contends that under Article 189 of

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<sup>4</sup> 2022 MLD 570

<sup>5</sup> 2012 SCMR 556

<sup>6</sup> 2021P Cr. LJ 759

<sup>7</sup> 2023 SCMR 857

the Constitution of Islamic Republic of Pakistan, 1973, while the decision reported as **Gul Muhammad vs The State**<sup>8</sup> is clearly binding on this court. The factual findings that there was inordinate delay should be reconsidered by this Court on the basis that as all the persons who could have been a Complainant were injured in hospital and who could not have therefore registered the FIR. He pleaded that this fact was not deliberated on by the Supreme Court of Pakistan and may be considered afresh in this Application.

10. I have heard the counsel for the Applicants, counsel for the Complainant and the learned Additional Prosecutor General Sindh and perused the record.

9. Examining the roles assigned to the Applicants it is evident that Hussain Bux has not been assigned any specific role in the FIR and having a lesser role than that of Gul Muhammad son of Wassayo would be entitled to the concession of bail on the principles of the rule of consistency.

10. Comparing the role assigned to Gul Muhammad son of Wassayo who had shot the Complainant on his ear and shoulder as opposed to the role assigned to Jawed who had shot Gul Bahar on his leg, it would seem that the role assigned was similar and as such the concession of bail on the principles of the rule of consistency would also be extended to him.

11. Regarding Irshad Ali, clearly the role assigned to him is greater than that of Gul Muhammad son of Wassayo inasmuch as the role assigned to him was to have discharged a fire arm which directly led to the demise of Ghulam Abbas. The role having been assigned to Irshad Ali being greater than that of the role assigned to Gul Muhammad prima facie the rule of consistency would not be applicable to grant him bail.

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<sup>8</sup> *Ibid*

12. It therefore remains to be seen whether on account of the inordinate delay that has been made in the registering of the FIR which was admittedly filed two days after the incident had occurred thereby establishing a case of further inquiry has been made out by the Applicants entitling them to bail. The Applicants contend that this issue has been decided by the Supreme Court of Pakistan in the decision reported in Criminal Petition No.1557 of 2022 reported as **Gul Muhammad vs The State**<sup>9</sup> and it is not for this Court to sit in appeal over that Judgment as to the findings regarding the delay in registering the FIR or as to the finding that the inordinate delay would necessitate a further inquiry. The contention of the counsel for the Complainant as well as the learned Additional Prosecutor General that the Supreme Court of Pakistan was not assisted properly regarding the delay in registering the FIR i.e. on account of each of the persons who could have been the complainant being injured in Hospital, while appealing, would involve me assuming that the Supreme Court of Pakistan had not considered this fact to the time of granting bail in Criminal Petition No.1557 of 2022. While acknowledging that it has not been specifically recorded in the decision reported as **Gul Muhammad vs The State**<sup>10</sup> that the Complainant being in hospital would not have been able to register the FIR and which fact may justify the delay in filing of the FIR, I cannot imagine how this fact would not have been considered by the Supreme Court of Pakistan during the hearing of Criminal Petition No.1557 of 2022. It is apparent that the Supreme Court of Pakistan has perused the FIR at the time of the hearing of Criminal Petition No.1557 of 2022 and wherein it has been specifically stated that the FIR was being registered at the hospital where the Complainant was under treatment and which has necessitated the FIR being registered at the Hospital. It would naturally follow from there that the Supreme Court of Pakistan noting that the Complainant was in the hospital at the time of the registration of the FIR would have taken into account the contention of the Counsel for the Complainant and the Learned Additional Prosecutor General Sindh that the Complainant being in hospital would not have been able to immediately register the FIR. I will not second guess the Supreme

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<sup>9</sup> 2023 SCMR 857

<sup>10</sup> *Ibid*

Court of Pakistan and am clear that when passing its decision, the Supreme Court of Pakistan took into account all factors regarding the delay while coming to the conclusion that inordinate delay had occurred in the registration of the FIR rendering the case to come with the purview of Sub-Section (2) of Section 497 whereby a further inquiry would be necessitated to assess the Applicants guilt.

13. For the foregoing reasons I had on 26 July 2023 allowed this application and held that each of the Applicants were to be extended the concession of bail subject to furnishing bail bonds in the sum of Rs.200,000 (Rupees Two Hundred Thousand) and with one surety in the like amount to the satisfaction of the trial court and these are the reasons for that order.

JUDGE

A.