

## IN THE HIGH COURT OF SINDH AT KARACHI

**Cr. Bail Application No. 2152 of 2023**  
(Ashraf Vs. The State)

**Cr. Bail Application No. 2320 of 2023**  
(Mehboob & Karmi Vs. The State)

Mr. Mansoor Ahmed Turk, Advocate for applicant

Applicant Ashraf present in Court on bail in Cr.B.A. No. 2152 of 2023

Mr. Rafiq Ahmed Mallah, Advocate along with Complainant

Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh for the State along with SIP Gulzar Ahmed Tunio, I.O.

Date of hearing : 01.12.2023

### **ORDER**

**OMAR SIAL, J.:** Noor Mohammad Khaskheli, on 24.08.2023, went to the Mirpur Sakro police station and gave information about a murder that had occurred earlier that day. He recorded that he recently married Allah Bachayee, due to which her father, Abdullah Khaskheli, was unhappy. Noor Mohammad and his brother Khamiso along with Ghulam Loung had taken the latter's son, Fida Hussain, to a clinic for treatment when Ashraf Khaskheli (with a pistol), Allah Bux Khaskheli (with a dagger), Mehboob Khaskheli (with a cudgel), and an unarmed Dildar Khaskheli, came to the clinic and exchanged harsh words with the complainant party. Ashraf Khaskheli then fired on the complainant, which missed him. Allah Bux Khaskheli killed Khamiso by stabbing him a couple of times. The complainant alleged that the attack took place at the instigation of Karmi Khaskheli. F.I.R. No. 120

of 2023 was registered under sections 302, 324, 109, 504 and 34 P.P.C.

2. Karmi and Mehboob Khaskheli (a father-son duo) were arrested and applied for bail before the learned Sessions Judge, Thatta; however, their application was dismissed on 07.10.2023. Ashraf Khaskheli applied for pre-arrest bail before the same court, but his application was dismissed on 19.09.2023. Karmi and Mehboob Khaskheli have now prayed this Court to admit them to post-arrest bail while Ashraf Khaskheli seeks pre-arrest bail.

3. I have heard the learned counsel for the applicants and the learned Additional Prosecutor General assisted by the learned counsel for the complainant. My observations and findings are as follows.

4. The point of friction between the parties is the marriage of Allah Bachayee with Noor Mohammad. She was Mehboob Khaskheli's wife previously. Allah Bachayee's version was that Mehboob had divorced her, after which she married Noor Mohammad, whereas Mehboob and company deny that he had divorced her. On that particular day, the Khaskhelis had information that Allah Bachayee and Noor Mohammad would come with a child to the clinic, and therefore, the ambush was allegedly arranged. Allah Bachayee, however, had not come.

5. The presence of all the accused at the clinic and the firing was confirmed by Dr. Salim (the doctor on duty). No bullet casings were found on the spot; however, the investigation officer explained that the clinic's location is such that it was extremely difficult to secure the crime scene.

6. The investigating officer explained that Karmi is an old man who has fully co-operated with the investigation. Karmi told the investigator that he and his son had no idea that the altercation would end in the manner it did. They had not set out to murder anybody. Upon a tentative assessment, it seems that Ashraf and

Allah Bux took it upon themselves to satisfy their misconceived and misplaced honour, and Allah Bux ended up killing Khamiso while Ashraf opened fire on the complainant, albeit injuring nobody. Allah Bux is yet to be arrested.

7. The overt role of killing has been assigned to Allah Bux. The remaining accused could be vicariously liable for the act of Allah Bux. I am inclined to give Mehboob and Karmi the benefit of the doubt at this stage, keeping in mind the fact that Karmi was unarmed and Mehboob with a lathi. In the F.I.R., too, it has not been alleged that Mehboob or Karmi took any active part in the incident or hit the deceased or anybody else. Whether they shared a common intention with Allah Bux will be determined at trial after evidence is shown to the court. I am not inclined to give Ashraf any concession on this account. My reason to distinguish his case is that his act of opening fire upon the complainant may indicate the common intention and that I have been unable to conclude any malafide on the part of the complainant or the police, a pre-requisite for the grant of pre-arrest bail. It would be appropriate for Ashraf Khashkheli to surrender and seek post-arrest bail if so advised.

8. Given the above, Mehboob and Karmi Khashkheli are admitted to post-arrest bail against a solvent surety of Rs. 250,000 each and a P.R. Bond in the same amount. Ashraf Khashkheli's bail application is dismissed.

**JUDGE**