

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Bail Application No.2196 of 2023

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Date	Order with signature of Judge
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For hearing of bail application

**05.12.2023**

Mr. Nasir Ahmed advocate for the applicant  
Mr. Saleem Akhtar Buriro, Additional PG  
Complainant Abdul Ghaffar present in person

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The applicant Syed Jawed Hussain seeks indulgence of this Court against the order dated 06.9.2023 passed by VII Additional Sessions Judge/MCTC Karachi Central whereby the trial Court dismissed the post-arrest bail of the applicant on the premise that the prosecution has direct and connecting evidence against the applicant.

2. Complainant has narrated the facts that his brother received bullet injuries by 4 assailants and died at the spot, such report of the incident was given to P.S. Rizvia Karachi, who registered FIR No. 296/2022 for the offenses under Section 302/34 PPC against four unknown persons who allegedly killed the brother of the complainant by firing. During the investigation, the Investigating Officer submitted a charge sheet in the subject crime showing the applicant involved in the subject crime. He also obtained a blood-stained stick for DNA and the blood-stained clothes of the deceased, recovered a Toyota Corolla Car BBU-488 Gray color, and two mobile phones. The applicant's bail plea has been rejected by the trial court for the aforesaid reasons.

3. It is contended by learned counsel for the applicant that the applicant has been falsely implicated in this case by the Police; there is apparent malafide on the part of the complainant and police; the applicant was not nominated in the FIR and was implicated subsequently merely on the basis of the confessional statement of an alleged 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 applicant, therefore, the matter requires further inquiry; the applicant has 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 applicant, or he will abscond if he is released on bail.

4. On the other hand learned Addl. P.G. assisted by the complainant submitted that the co-accused had specifically implicated the applicant and, in view of Article 43 of the Qanun-e-Shahdat Order, 1984, his statement cannot be ignored or discarded. The allegations of enmity and malice have been denied by the complainant. Likewise, malice on the part of the police has been denied by learned Addl. P.G. They concede that no recovery was made from the applicant; there is no independent evidence

against the applicant; the investigation in this case has been completed; and, the final charge sheet has been submitted before the learned trial Court.

5. I have heard the learned counsel for the parties and have perused the material available on record.

6. I have heard learned counsel for the applicant and complainant and the learned Addl. P.G., and have also examined the material available on record, particularly the police papers submitted by learned Addl. P.G. It is an admitted position that no recovery whatsoever was made from the applicant and, except for the confessional statement of the co-accused, there is no other, independent or incriminating material against the applicant to corroborate the said confessional statement. Prima facie involvement of the applicant based on the statement of co-accused cannot be determined at the bail stage merely on the basis of the confessional statement of other accused before the Police without any other independent incriminating material corroborating the confessional statement. The applicant has made specific allegations of enmity and malice on the part of the Police. He has also alleged that the police is in collusion with the complainant. In the above circumstances, this is a case which requires further inquiry.

7. Admittedly, the investigation in this case has been completed and the final charge sheet has been submitted before the trial Court. Therefore, the applicant shall not be required for any further investigation, and there is no question or probability that the evidence will be tampered with by him or that the prosecution witnesses will be influenced by him if he is enlarged on bail. The guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence that will be produced by the prosecution and the defense before the trial Court.

8. In view of the above, the applicant / accused Syed Jawed Hussain is admitted to post-arrest bail in FIR No. 296/2022 for the offenses under Section 302/34 PPC of PS Rizvia, subject to his furnishing solvent surety in the sum of Rs.100,000.00 (Rupees one hundred thousand only) and a P.R. bond for the same amount to the satisfaction of the learned trial Court. The instant bail application stands disposed of in the above terms.

9. It is clarified that the observations made herein are tentative in nature which shall not prejudice the case of either party nor shall they influence the learned trial Court in any manner in deciding the case strictly on merits in accordance with law.

JUDGE