

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No. 2155 of 2023

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Date	Order with signature of Judge
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For orders on office objection.

For hearing of bail application

**11.12.2023**

Mr. Waqar Alam Abbasi assisted by Mr. Arsalan Naeem Rajput and Muneer Ahmed Gilal advocate for the applicant

Mr. Abdul Basit Afridi advocate for the complainant

Mr. Talib Ali Memon APG along with SIP Ghulam Mustafa of PS Manghopir

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The applicants Pir Bux and Mukhtiar seek their admission on post-arrest bail in F.I.R No.118/2023, registered under Sections 302/34 PPC at Police Station Manghopir, Karachi.

2. The accusation against the applicants, as per contents of the F.I.R, is that on 18.02.2023, they in connivance with their accomplices fired upon the deceased Bahram cousin of the complainant, who succumbed to injuries and died, such incident was reported to the Manghopir Police station, Karachi, who registered the criminal case against the applicants on 18.02.2023. The investigating officer arrested both the accused who allegedly confessed their guilt and were challaned in the subject crime. Their post-arrest bail applications have also been declined by the Trial Court vide order dated 11.09.2023 on the premise that co-accused Dur Muhammad confessed his guilt and named the applicants as his accomplices.

3. Learned counsel for the applicants has submitted that the applicants are not nominated in the FIR and their names have been given by co-accused Dur Muhammad which has no value in the eyes of the law; that nothing has been recovered from the applicants; that there is no eye witness of the alleged incident and the applicants are behind the bar since their arrest. He prayed for allowing the bail application.

4. The learned counsel for the complainant has submitted that the applicants are involved in the subject crime and they have been specifically nominated by their accomplice i.e. co-accused Dur Muhammad who recorded his statement under Section 164 Cr. P.C., the mashirnama of recovery of crime weapon from the co-accused has been effected, Medical report and statement of PWs confirm that the deceased received firearm injuries from the shotgun at the hands of the applicants

involved in the subject FIR. Learned counsel for the complainant further submitted that sufficient incriminating material was collected by the police to connect the applicants with the alleged crime and it seriously hampers the course of the investigation; if the applicants are released on bail as the maximum punishment for the offense under Section 302 PPC is life imprisonment or death, which comes in the prohibitory clause of Section 497(1) Cr. P.C. In support of his contention, he relied upon the case reported as **2022 SCMR 1299, 2010 MLD 1342, and PLD 2007 SC 202**. He prayed for the dismissal of the bail application.

5. Learned APG has supported the impugned order declining bail to the applicants and contended that the applicants are specifically named in the crime report with the allegation of causing a firearm injury on the deceased with a lethal weapon, in connivance with their accomplice as such no concession is to be made by this Court.

6. I have heard learned counsel for the parties and have perused the material available on record with their assistance.

7. From perusal of the FIR, it appears that it has been lodged against the unknown accused persons who murdered deceased Behram, even; though there is no description of the accused persons mentioned in the FIR. however, the names of the applicants have been included in the second challan as the first report was submitted in A Class that too upon the statement of the co-accused recorded under section 164 Cr.P.C., after a considerable period of his arrest as he was in police custody since 5.6.2023 and his statement was recorded on 14.6.2023, as such police pressure upon the co-accused cannot be ruled out at the bail stage and on his statement the present applicants are facing the trial even otherwise the statement of the co-accused needs to be determined by the Trial Court after recording the evidence whether the applicants are liable for the action of the co-accused as the same is inadmissible in evidence in terms of Article 38 of the Qanoon-e-Shahadat Order. The Supreme Court in the case of *The State through Director Anti-Narcotic Force, Karachi v. Syed Abdul Qayum* [2001 SCMR 14], while dilating upon the evidentiary value of statement of co-accused made before the police in light of mandates of Article 38 of the Qanun-e-Shahadat Order, 1984, inter alia, held that statements of co-accused recorded by police during investigation are inadmissible in the evidence and cannot be relied upon. A similar view has been reiterated by the apex Court in the case of *Raja Muhammad Younas v. The State* [2013 SCMR 669]. It would not be out of place to mention here that evidence of an accomplice is ordinarily regarded suspicious, therefore, the extent and level of corroboration has to be assessed keeping in view the peculiar facts and surrounding circumstances of the case.

8. In principle bail does not mean acquittal of the accused but only change of custody from police to the sureties, who on furnishing bonds take responsibility to produce the accused whenever and wherever required to be produced. On the aforesaid proposition, I am fortified with the decision of the Supreme Court on the case of Haji Muhammad Nazir v. The State (2008 SCMR 807).

9. It is a settled principle of law that the benefit of the doubt can be even extended at the bail stage. Reliance is placed on Muhammad Ejaz v. The State (2022 SCMR 1271), Muhammad Arshad v. The State (2022 SCMR 1555), and Fahad Hussain v. The State (2023 SCMR 364).

10. For the aforesaid reasons the the bail application of applicants, Peer Bux and Mukhtiar are allowed, consequently, the applicants are admitted to post-arrest bail in Crime No. 118/2023 of PS Manghopir Karachi West, subject to their furnishing solvent surety in the sum of Rs.100,000/- (Rupees one hundred thousand) each with P.R Bond in the like amount to the satisfaction of the Trial Court. The trial Court is directed to examine the material witnesses within three months at least complainant must be examined. MIT II is directed to seek compliance within time.

11. All the observations made hereinabove are tentative and shall have no bearing on the final determination of guilt or innocence by the trial Court.

12. These are the reasons for my short order dated 11.12.2023. whereby the bail application of the applicants was allowed.

JUDGE