## ORDER SHEET IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 977 of 2023

Date

Order with signature of Judge

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For hearing of bail application

## 18th July 2023

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Mr. Saifullah Abbasi advocate for the applicant Mr. Talib Memon APG

**Salahuddin Panhwar, J.-** It is alleged that the applicant along with other accused in furtherance of their common intention committed murder of complainant Muhammad Ghulam Qasim and caused fire shot injuries to passenger Zafar, hence the present case was registered. After having refused bail after arrest from learned trial Court, the applicant has approached this Court for the same relief.

2. Heard and perused the record.

3. Record reflects that the applicant was not nominated in the FIR and was involved in the present case on the basis of statement of co-accused Malik Altaf. The apex 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 has held that statements of co-accused recorded by police during investigation are inadmissible in evidence and cannot be relied upon. Similar view has been taken in the case of Raja Muhammad Younas v. The State (2013 SCMR 669) by holding that "After hearing the counsel for the parties and going through the record, we have noted that the only material implicating the petitioner is the statement of co-accused Amjad Mahmood, Constable. Under Article 38 of Qanun-e-Shahadat Order, 1984, admission of an accused before police cannot be used as evidence against the co-accused." Learned APG then emphasized that applicant is also involved in other criminal cases, it would suffice that mere involvement in other cases would not disentitle an accused from the relief of

bail, if he otherwise succeeds in bringing his case within the meaning of further inquiry. Nothing has been brought on record that applicant has been convicted in any other case, hence, in such situation mere involvement in criminal cases cannot be a ground to withhold the concession of bail in given circumstance. Reliance is placed upon the case reported as **Jamal-ud-Din alias Zubair Khan v. The State (2012 SCMR 573)**.

4. With regard to the question of various liability, it is well settled that bail could not be refused on the basis of vicarious liability, unless it is shown through positive evidence that indeed accused had played a role in the crime. Reliance is placed upon the case reported as <u>Manzoor Hussain v. State (2011</u> <u>SCMR 902)</u>. In these circumstances, the case of the applicant requires further probe into the guilt. Accordingly, applicant/accused is admitted to bail subject to his furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Lacs Only) and P.R bond in the like amount to the satisfaction of the trial Court.

5. The observations made hereinabove are tentative in nature and learned trial Court shall not be influenced in any manner, while deciding the case on merits.

JUDGE

Sajid

Similar view has been reiterated by the apex Court in case titled, "Raja Muhamamd Younas Vs the State" reported in (2013 SCMR 669), by holding as under:- "