

# IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No.D- 38 of 2023

Present:

**Muhammad Iqbal Kalhoro &  
Arbab Ali Hakro, JJ**

Applicant : **Fakir Inayat Hisbani**  
through Mr. Illahi Bakhsh Jamali,  
Advocate.

Complainant : **Fakir Nazakat Ali Hisbani**  
: through Mr. Nisar Ahmed  
Bhanbhro, Advocate.

The State : Through Mr. Aftab Ahmed Shar,  
Additional Prosecutor, General.

Date of Hearing : **15<sup>th</sup> August, 2023**  
Date of Decision : **15<sup>th</sup> August, 2023**

## **ORDER**

**MUHAMMAD IQBAL KALHORO, J.:** On 02.01.2023, complainant Fakir Nazakat Ali Hisbani reported to P.S, Faiz Ganj-Khairpur an incident of murder of his brother Fakir Liaquat Ali Hisbani, posted as Director, PEMRA Department, Karachi on 01.01.2023 at 1530 hours, near the bungalow of complainant in Deh Mari village Khush Khair Muhammad by accused Fakir Jabir Ali alias Iqbal and Fakir Hizbullah, armed with K.Ks and Ahmed Ali, all sons of applicant, when he was leaving for Karachi to join duty after completing his leave. Motive narrated by the complainant is a dispute over the bungalow, which the accused party used to demand from complainant to hand over to them. Applicant is assigned the role of hatching conspiracy, who, however, was not present at the spot at the time of incident. The evidence collected in support of his role is statements under Section 161 CrPC of two PWs,

namely, Fakir Hyder Bux and Javed Akhtar, recorded on 14.02.2023. According to them, they had overheard conversation between applicant and others planning about present offence in their Otaq about three months before the incident, but when they saw them, they changed the subject.

2. Initially, applicant was granted ad-interim pre-arrest bail by the trial Court, but subsequently, on its dismissal, he was arrested on 09.02.2023. The main accused, reportedly, have not been arrested yet.

3. Learned defense counsel has submitted that applicant was not present at the spot; no active role has been assigned to him; on account of admitted enmity, complainant has implicated all male members of the family; applicant was abroad i.e Iran at the time of incident and returned to Pakistan only on 03.01.2023 after the incident. In support of his arguments, he has relied upon cases of *Zaigham Ashraf v. The State and others* (**2016 SCMR 18**) and *Hamid Khan v. The State* (**2022 MLD 31**)

4. On the other hand, learned counsel for the complainant and Additional P.G for the State, both have opposed bail to applicant on the grounds that there is sufficient evidence connecting him with the alleged offence; CDR of applicant was collected in investigation which shows his constant contact with the accused, besides clips of CCTV camera installed at the house of applicant, memory card, charger etc. were collected during the investigation, which shows that applicant and his family was conducting recce of the moments of the victim etc.; applicant after getting ad-interim pre-arrest bail had been moving certain applications to save himself and his sons, the accused; he initially filed an application under Section 22-A&B CrPC for registration of case against complainant party which was dismissed. Then, he filed a false application under Section 491 CrPC claiming that his sons/accused are in police custody, which was followed by a contempt application, in

which his son claimed that applicant was arrested by police illegally, but when the Magistrate concerned raided the P.S, he was found sitting in the WHC office. Learned counsel for complainant has relied upon cases of *Muhammad Irshad v. Muhammad Bashir Goraya and others* **(2006 SCMR 1292)** and *Samiullah and others v. Laiq Zada and another* **(2020 SCMR 1115)**.

5. We have heard learned counsel for the parties, perused material available on record and taken guidance from the case-law cited at the bar. In FIR, role attributed to applicant is of hatching a conspiracy and instructing his sons to commit the offence on account of a dispute over a bungalow. It is however an admitted position that applicant was not present at the time of incident. *Prima facie*, only evidence collected by the Investigating Officer in support of such allegation is statements of two PWs, namely, Fakir Hyder Bux and Javed Akhtar, which have been recorded after more than one month of the incident. From their statements, *prima facie*, nothing specific about conspiracy of the offence by applicant can be gathered.

6. Moreover, per such statements, PWs had overheard applicant and others planning to murder someone from the family of complainant three months prior to the incident. But they did not alarm the complainant party about it or even, after the incident, attempted to immediately contact the complainant party either and narrate the whole story to them.

7. Recovery of CCTV camera and other articles, as pointed out by complainant's counsel do not, *prima facie*, improve the case of the prosecution vis-a-vis role of applicant unless they are subjected to the taste of trial. Parties are related *inter se* and their houses are situated either adjacent or in front of each other. CCTV camera installed at the house of complainant catching moments of victim and complainant party, in such circumstances, appears but normal. Applications cited by

complainant, moved by applicant do not point out to his role of hatching a conspiracy of the alleged offence either and does not change the fact that the allegation leveled against applicant is yet to be determined in the trial. Therefore, we are of the view that applicant has been able to make out a case for post-arrest bail.

8. Accordingly, this bail application is **allowed** and applicant is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.200,000/- (Two Lac) with P.R bond in the like amount to the satisfaction of the trial Court.

9. The observations made hereinabove are tentative in nature and shall not influence the trial Court while deciding the case on merits.

**JUDGE**

**JUDGE**

Ahmad