

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

Criminal Bail Application No. 1263 of 2023

Date	Order with signature of Judge
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For hearing of bail application

15.8.2023

Mr. Akhlaq Ahmed Baloch advocate for the applicant
Mr. Abdul Hafeez Advocate for complainant
Mr. Muntazir S. Mehdi, APG

Through this bail application under Section 497 Cr.P.C., the applicant has sought admission to post-arrest bail in F.I.R No.1178/2021, registered under Section 302/337-A(i)337-A(ii)34 PPC at Police Station Gulshan-e-Iqbal Karachi. The earlier bail plea of the applicant has been declined by the learned Session Judge Karachi East vide order dated 30.05.2023 in Bail Application No.2607/2023.

2. The accusation against the applicant is that he in connivance with his accomplices caused the death of the deceased Amir son of the complainant. The complainant lodged FIR at Police Station Gulshan-e-Iqbal Karachi against the applicant and others on 01.10.2021 with the allegation that on 30.09.2021 he was informed that his son had been injured in a quarrel with co-accused Talib, who received fatal injuries and was taken to Jinnah hospital for treatment; however, during treatment he succumbed to injuries and died. The trial Court framed the charge against the co-accused and evidence was recorded, finally, the learned trial Court vide judgment dated 14.04.2023 convicted co-accused Talib Hussain under Section 302(b) PPC and acquitted the co-accused from the charge. In the meanwhile, the applicant approached this Court for protection by filing Criminal Bail Application No.905/2023 which was allowed, and the applicant was granted protective bail for nine days thereafter he filed bail before arrest application before the trial Court which was dismissed vide order dated 11.5.2023, subsequently the applicant was arrested and he filed Post Arrest Bail Application No.2607/2023 before the trial Court which was too dismissed vide order dated 30.5.2023 on the ground that his previous bail application was dismissed on merit as such no fresh ground is available with the applicant.

3. It is, inter alia, contended by the learned counsel for the applicant that applicant is innocent and falsely been implicated in this case due to

malafides of the complainant in connivance with local police; that the applicant was not nominated in the FIR but his name was disclosed in this case by PWs in 161 statement; that thereafter investigation officer submitted challan before the learned trial Court; that nothing has been recovered from the exclusive possession of the applicant; that the complainant has implicated the applicant due to relationship with Talib Hussain which has been convicted by the learned trial Court vide judgment dated 14.04.2023; that the learned trial Court has been pleased to acquit co-accused namely Sajid Ali & Amir. Learned counsel emphasized that the trial Court has mainly refused the bail of the applicant on the ground that his earlier bail was declined on merit as such subsequent bail application was/is not maintainable and no fresh ground is available with the applicant. He added that since the co-accused who had a similar role in the case have been acquitted by the trial court, therefore judicial propriety demands that the concession of post-arrest bail may be given to the applicant under the law. He lastly prayed for allowing the instant bail applicant.

4. Learned APG assisted learned counsel for the complainant has opposed the application and submits that the learned trial Court has rightly dismissed the bail plea of the applicant and the applicant does not deserve the concession of post-arrest bail. Learned counsel referred to the statement dated 15.08.2023 and submitted that the prosecution collected sufficient evidence to connect the applicant to the aforesaid crime, therefore, the applicant is not entitled to the concession of post-arrest bail at this stage as he is required to face the trial on the premise that the applicant remained absconder and proclamation under Section 87 and 88 Cr.P.C. was initiated against him, however, after the acquittal of co-accused on 14.4.2023 he approached this Court in Criminal Bail Application No.905/2023 whereby the protection of ten days was given to the applicant who subsequently filed a bail application before the trial Court which was dismissed vide order dated 11.5.2023. He next submitted that the case against the applicant needs to be referred to the trial Court so that the matter be proceeded against him under the law on the premise that he has misused and thwarted the legal process and after the acquittal of the co-accused in the aforesaid case, he has taken advantage of acquittal order which has been challenged before this Court. He next submitted that the applicant was a police officer, struck *gamla* over the head of PW Shawal and the MLO has declared the injury as *Shuja-e-Mudihah*. Learned counsel emphasized that the CDR shows presence of accused at the place of incident. He further submitted that mere fact that the co-accused were acquitted is no ground to allow the applicant for the relief sought as he has

rightly been refused bail by the trial Court vide order dated 30.5.2023. In support of his contentions he relied upon the cases of Mohammad Arshad v/s The State (1996 SCMR 74) Rana Abdul Khaliq vs The State (2019 SCMR 1129), Habibullah vs The State (2019 YLR (N) 65) Ghulam Rasool alias Pahtan vs. The State 2021 P.Cr. L.J 112, Abu Bakar Siddique vs. The State (2021 SCMR 5). He lastly prayed for the dismissal of the bail application.

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

6. Tentative assessment of the record reflects that the complainant is not the eye-witness of the incident and he had lodged the FIR on the information received by him from his wife besides he admitted in evidence that in the memo of arrest there is no mention that Shawal received any injury. He also admitted in cross that only unknown person in the FIR is Zahid, who is a police officer. The injured Shawal has deposed that he received a blow over back side of his head which was struck by accused Sajid. After the lodgment of the FIR, the Investigating Officer recorded 161 Cr.P.C. statements of PWs who were allegedly present at the place of the incident and stated that the present applicant was accompanied by another accused person. Perusal of the record reveals that prosecution witnesses have only leveled the allegation of the presence of the applicant who allegedly grappled with the deceased and the main accused Talib caused a fatal blow on his head who succumbed to injury and died, however, though the co-accused were charged jointly except the applicant but on one and same set of evidence, the learned trial Court acquitted two of them namely Muhammad Amir and Sajid Ali excepting the accused Talib who has been convicted by the trial court.

7. Legally speaking the law on the subject point is very clear in its terms, primarily, the evidence should be believed or disbelieved as a whole and not in parts unless exceptions are so justified because the Criminal Administration of Justice always insists on giving benefit of doubt to accused. In the present case when the eyewitnesses produced by the prosecution were disbelieved to the extent of two accused persons attributed effective role, then the said eyewitnesses could not be relied upon for bail without the availability of independent corroboration to the extent of such other accused. On the aforesaid proposition, I am guided by the decision of the Supreme Court in the case of Sardar Bibi and others v. Munir Ahmed and others (2017 SCMR 344). It is a settled principle of law that an accused person is presumed to be innocent until and unless he is proven guilty beyond a reasonable doubt and this presumption of his innocence continues until the prosecution succeeds in proving the charge against him beyond a reasonable doubt based on legally admissible,

confidence-inspiring, trustworthy and reliable evidence. In such circumstances, the rule of giving the benefit of the doubt to an accused person at the bail stage is essentially a rule of caution and prudence and is deep-rooted in our criminal jurisprudence for the safe administration of criminal justice. In common law, it is based on the maxim, "It is better that ten guilty persons be acquitted rather than one innocent person be convicted".

8. I have noticed that the trial has mainly refused the bail of the applicant on the ground of his previous bail application was dismissed on merit and no fresh ground was available with him, prima-facie this is hardly a ground to refuse post-arrest bail to the applicant as prima-facie the role of the applicant is same as of co-accused who was acquitted from the charge, but unfortunately the applicant has been refused bail merely based on the wrong notion.

9. I am of the tentative view that the prosecution, to make out a case for refusal of bail to an accused, is primarily supposed to place on record material based on which the applicant is believed to be involved in the present case, which factum requires further inquiry, instead of dilating upon the facts of the case in details in terms of the ratio of the judgment pronounced by the trial court acquitting the co-accused.

10. In the wake of the above discussion, this bail application is allowed. The applicant is granted post-arrest bail in the aforesaid crime subject to furnishing of surety in the sum of Rs.100,000/- (Rupees one hundred thousand) with P.R bond in the like amount to the satisfaction of the learned Trial Court.

11. The applicant is directed to attend the trial court on every date of hearing. However, if the applicant misuses or abuses the concession of the bail, the learned Trial Court may be at liberty to cancel the bail. The observations made in this bail order are tentative and shall not prejudice the case of either party.

JUDGE

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