

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Cr. Bail No. 1730 of 2023**

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing of bail application

31.08.2023

Mr. Saddam Hussain Abro advocate for the applicant
Mr. Talib Ali Memon Assistant PG along with ASI Mumtaz Ali of P.S SSHIA

Through the instant bail application, the applicant has approached this Court for a grant of post-arrest bail in FIR No.1641/2022 registered for offenses under Section 324/34 PPC of P.S Site Super Highway Industrial Area, Karachi.

2. The accusation against the applicant is that on 29.11.2022 at about 2200 to 2215 hours, he along with his accomplices opened fire upon Mujahid cousin of the complainant to commit his murder, however, he was saved, such report of the incident was lodged at P.S SSHIA, Karachi on 02.12.2023 after delay of four days. His post-arrest bail was declined by the Additional Sessions Judge VIII (Malir) Karachi vide order dated 31.07.2023 in Cr. Bail Application No. 3256/2023.

3. Mr. Saddam Hussain Abro, learned counsel for the applicant has submitted that the alleged incident occurred on 29.11.2022 at 10.00 p.m. in the night at a village named Gulshan Baloch Yousuf Khan Goth, and the FIR was lodged on 02.12.2022 approximately after a delay of 4 days, whereas the accused was also nominated in another case under Section 23(i)A of the Sindh Arms Act 2013 at same police station SSHIA on 03.12.2022, whereas the complainant has not disclosed this factum in the FIR No.1645/22; that only lacunae is sufficient enough that the complainant has lodged the FIR with due consultation and needs the further inquiry; He has further contended that there is no substantial piece of evidence with the prosecution against the accused, which could connect the applicant with alleged incident. He lastly prayed for allowing the bail application.

4. The notices were issued to the complainant to be served through the Investigating Officer, who has reported that the complainant was approached to appear before this Court and he assured to be present in Court, however, he is called absent without intimation. Such a report of the Investigating Officer has been placed on record.

5. Mr. Talib Ali Memon, learned Assistant PG has opposed the bail application and argued that the applicant was arrested red-handed on the spot. Learned APG contended that the name of the applicant transpires in the FIR; therefore, the applicant is not entitled to a grant of bail.

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

7. While granting bail even the merits of the case can be touched upon. No doubt the name of the applicant/accused transpires in the FIR and the role assigned to the present applicant/accused that he was armed with a pistol made firing upon the injured victim but nothing was recovered from him during the investigation. It seems that no role has been attributed to the applicant of any overt act during the occurrence except the role of ineffective firing in such circumstances of the case, it is for the learned trial Court to determine, after recording evidence pro and contra, whether the accused is vicariously liable for the act of co-accused and that case was one of further inquiry. On the aforesaid proposition, I am guided by the decisions of the Supreme Court in the cases of Mumtaz Hussain v. The State (1996 SCMR 1125), Jahanzeb and others v. State through A.G. Khyber Pakhtunkhwa Peshawar (2021 SCMR 63) the Supreme Court in such circumstances has granted bail to accused persons on the ground that allegation against accused persons was that they resorted to indiscriminate firing, however, in the present case, the injured sustained two injuries and nothing was recovered from the spot. No overt act was ascribed to the accused person except the allegation of ineffective firing, which too was not supported by the recovery of any weapon and crime. The case of the accused person is one of further inquiry falling within the ambit of Section 497(2) Cr. P.C. entitling him to the concession of post-arrest bail.

8. In view of the above discussion, learned counsel for the applicant/accused has made a prima facie case for bail in light of sub-section (2) of Section 497 Cr. PC, hence this bail application is accepted, subject to furnishing solvent surety in the sum of Rs.100,000/- with PR bond in the like amount to the satisfaction of the trial Court.

9. The observations made hereinabove are tentative and would not influence the learned trial Court while deciding the case of the applicants on merits.

JUDGE