

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

**Cr. Bail Appln. No. S – 208 of 2023**

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DATE

ORDER WITH SIGNATURE OF JUDGE

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**Hearing of bail application**

1. For orders on office objection at flag 'A'
2. For hearing of bail application

**15.09.2023**

Mr. Ameenuddin Khaskheli, Advocate along with Applicant  
Mr. Mir Nawaz Kalhoro, Advocate along with complainant  
Mr. Shafi Muhammad Mahar, Deputy Prosecutor General for the State

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**ORDER**  
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**MUHAMMAD IQBAL KALHORO, J.-** FIR alludes to a quarrel between relatives of complainant and accused party on 07.03.2023 in a nearby village, and decision of complainant to go to meet his relatives in the said village along with his son Rashid Ali and P.Ws Sanaullah and Muhammad Usman to ask about the incident. And when they were close by, they saw applicant and other co-accused duly armed with weapons also going to the same village for a fighting with their relatives. The complainant party beseeched them not to fight and make a compromise. But, upon which, applicant armed with a Gun and Mobeen armed with a Repeater fired upon son of the complainant Rashid Ali, critically injuring him. He was referred to a hospital but ultimately on 10.03.2023 succumbed to his injuries, and died in a hospital at Hyderabad. Hence, complainant appeared and registered FIR.

2. Learned defence counsel submits that the applicant is innocent and has falsely been implicated in this case, he being advocate by profession was not present at the spot; during two investigations he was declared innocent and his name was placed in column No.2; in the initial documents including provisional medical certificate only one injury was shown to have been received by the deceased; that there is delay of three days in registration of FIR; that specific part of the injury caused by the applicant is not revealed in FIR; that source of identifying the applicant at the spot and others has not been revealed in FIR; that from the place of incident one empty was recovered; that the applicant has been implicated in this case because he had filed Power on behalf of the opposite party in a case pertaining to first incident, in which two FIRs i.e. Crime No.131 and 132 against relatives of the

complainant at Police Station, Moro under Section 324 etc. PPC were registered; that only in 161 CrPC statements, witnesses have pointed out to exact location of injuries caused by the applicant to the deceased; that there is absolutely no evidence against the applicant and keeping in view the strained relationship between the parties, false implication of applicant cannot be ruled out; that co-accused Mobeen having been assigned the same role has been granted post-arrest bail. In support of his contentions, he has relied upon the cases of **Muhammad Nadeem vs. The State and another (2023 SCMR 184)**, **Chaudhry Nadeem Sultan vs. The State through P.G Punjab & another (2022 SCMR 663)**, **Mukaram vs. The State & another (2020 SCMR 959)**, **Rahim Bux vs. The State (2005 Y L R [Karachi] 1544)**, **Muhammad Imran and others vs. The State (2007 YLR [Lahore] 401)**, **Muhammad Jabbar vs. Shah Daraz Khan & another (2009 P Cr. L J 370)**, **Allah Jurio alias Jurial and 2 others vs. The State (2011 P Cr. L J [Karachi] 946)** and **Muhammad Hashim Khoso vs. The State (2011 P Cr. L J [Karachi] 1580)**.

3. On the other hand, Complainant's counsel and learned Deputy Prosecutor General have opposed bail to the applicant on the grounds that he is specifically nominated in FIR to have caused injury to the deceased; that he was declared innocent on the basis of plea of *alibi*, which is to be appreciated at the time of trial; that the applicant is a criminal type person against whom a number of FIRs in the past were registered; that the discrepancies between ocular account and medical evidence cannot be appreciated at bail stage. In support of their contentions, they relied upon the cases of **Mumtaz vs. The State (2012 SCMR 556)**, **Amir Faraz vs. The State (2023 SCMR 308)** and **Ali Gul and another vs. The State (2022 P. Cr. L J Note 67 [Sindh])**.

4. I have considered submissions of the parties and perused material available on record, taken guidance from the case law cited at bar. The grounds taken by the applicant, mentioned above, for seeking pre-arrest bail require deeper appreciation of evidence. Applicant is named in the FIR registered on the day when the deceased died. He was initially taken to the hospital and was under treatment, the day he died, the FIR was registered. Therefore, there appears to be *prima facie* no delay in registration of FIR. In FIR, the applicant has been identified to have caused a firearm injury along with co-accused Mobeen to the deceased. In 161 CrPC statements of the witnesses, the location of injury caused by the applicant has been specifically identified, and it is the same injury which as per post-mortem was cause of death of the deceased. The plea of *alibi*, the reason of placing applicant in

Colum-II of the challan, I agree with learned DPG and Counsel for the complainant, is to be appreciated at the trial and requires deeper appreciation of evidence, only to be undertaken at the trial stage. The applicant party and complainant party both belong to Lund community and are resident of the same area, therefore, identification of the applicant at the time of incident is *prima facie* not an issue and cannot be counted in favour of applicant at this stage. The applicants' argument that it is just because he had filed a power on behalf of accused in Crime No.131 and 132, which prompted complainant to implicate him, does not appeal to the common sense. Because it is pointed out that accused in those cases are brothers and relatives of the applicant and filing power on their behalf cannot be a strong provocation for complainant to falsely implicate a person in the murder of his son, who was aged about 32 years. The co-accused was granted post-arrest bail, the principles, which govern such applications are quite different to the ones applicable in pre-arrest bail application. Here along with merits, element of mala fide on the part of the complainant to implicate a person in the case has to be evaluated for making a decision, which in this case is *prima facie* lacking.

5. The case law cited in defence carries different facts, hence not applicable. I, therefore, find that the applicant is not entitled to concession of pre-arrest bail, which is to be extended when there are sufficient grounds to believe that the accused has been falsely implicated. Therefore, **this bail application is dismissed** and the interim pre-arrest bail already granted to the applicant vide order dated 03.04.2023, is hereby recalled.

6. The observations made herein above are tentative in nature and will not prejudice the case of either party at the trial.

Judge

ARBROHI