

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

**Cr. Bail Appln. No. S – 564 of 2023**

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DATE

ORDER WITH SIGNATURE OF JUDGE

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**Hearing of bail application**

**25.09.2023**

Mr. Ali Mardan Shar, Advocate along with Applicant  
Mr. Imdad Ali Malik, 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.-** It is alleged in FIR that on 17.05.2023 when complainant, his brothers Abdul Hameed and Abdul Haq and friend Mushtaque Ahmed Mahar were returning to their village on two motorcycles from Khairpur, they were waylaid by six accused duly armed with weapons on a link road near Metla Chowk within precincts of police station Baberloi, who on the show of weapons committed robbery from them of different articles including cash and mobile phones. Out of six accused, two accused were identified to be Altaf Hussain and Sadam by caste Mangria. During course of robbery, on resistance, the aforesaid nominated accused fired upon brother of the complainant Abdul Hameed critically injuring him. When the complainant party raised cries, the accused decamped. The injured succumbed to his injuries and died at the spot. Hence FIR on 19.05.2023 after two days of the incident, not disclosing name of the applicant; however, on 20.05.2023 complainant's further statement was recorded naming the applicant and Shaman Ali who has been since arrested and recovery affected from him. Again on 10.06.2023, a second further statement of complainant was recorded in which he has disclosed the name of co-accused Zamir Hussain and Ali Asghar as accused in this crime.

2. Applicant's Counsel has pleaded for bail on the ground that applicant is not nominated in FIR; he is resident of the same area; his name has been disclosed in further statement but the source is not disclosed; no further proof has been collected that he is in fact involved in the case.

3. On the other hand, learned counsel for the complainant has opposed bail on the ground that there is no *mala fide* on the part of complainant, who otherwise could have named applicant in the FIR immediately. In support of his contentions, he has relied upon the ***cases of Rana Muhammad Arshad v. Muhammad Rafique and another (PLD 2009 Supreme Court 427) and Muhammad Ismail v. The State and other (2022 SCMR 707)***.

4. Learned DPG submits that although in further statement on 20.05.2023 complainant has disclosed the name of applicant but without assigning him any active role.

5. I have considered submissions of the parties and perused the record and the case law cited at bar. In FIR name of the applicant is not mentioned, which was registered after two days of the incident viz. 19.05.2023, and on the same day statements of witnesses were also recorded, but none mentioned the applicant as accused. On the next date, 20.05.2023 complainant on the basis of some source, which he has not disclosed, named the applicant to be accused in the offence without assigning him any part. On the basis of such statement, the applicant has been arraigned in the case and the Challan against him has been submitted without *prima facie* finding out any Call Data Record (CDR) of applicant to show his presence at the spot, his Criminal Record etc. Then the witnesses recorded their further statements on 10.06.2023 after a delay of more than 23 days of the incident, in which they have named applicant and other accused to be the culprits.

6. The address of the applicant shows that he is resident of same Taluka Kingri where complainant also resides, as such he is known to the

complainant is a foregone conclusion. In the circumstances, the involvement of the applicant on the basis of some reasons not relevant to the case cannot be ruled out. Therefore, a case of further inquiry is made out and false implication of the applicant cannot be ruled out. Accordingly, this bail application is allowed, the interim pre-arrest bail already granted to the applicant by this Court vide order dated 22.08.2023 is hereby confirmed on same terms and conditions. The applicant is directed to attend the trial Court regularly. The case law relied upon by learned counsel for the complainant, are distinguishable and not applicable in this case.

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

Judge

ARBROHI