

Order Sheet
IN THE HIGH COURT OF SINDH,
BENCH AT SUKKUR

Crl. Bail Application No.S- **141** of 2024
Crl. Bail Application No.S- **188** of 2024
Crl. Bail Application No.S- **205** of 2024

Date of hearing	Order with signature of Judge.
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Hearing of Bail Application

- 1.For orders on office objections.
- 2.For hearing of bail application

Mr. Anwar Ali Lohar, Advocate for the applicants in Crl. B.As No.S-141 & 188 of 2024 a/w applicant Muhammad Akhtar.
Mr. Shabbir Ali Bozdar, Advocate for the applicant in Crl. B.A.No.S-205 of 2024 a/w applicant Mukhtiar Ahmed Lakhani.
Mr. Paqrdeep Kumar Chouhan, Advocate for the complainant.
Mr. Aftab Ahmed Shar, Additional P.G for the State.

Date of Hearing & Order: **03-05-2024**

ORDER

MUHAMMAD IQBAL KALHORO, J.- These are three applications for pre-arrest and post-arrest bail in Crime No.261 of 2023, registered at P.S, A-section, Ghotki, under sections 302, 324, 504, 114, 337H(ii), 147, 148, 149 PPC r/w sections 337D, 337F(iii), 337F(i) PPC.

2. Initially, an FIR crime No.261 of 2023 was registered by one Rafique Ahmed, a Hari of accused party, against complainant of this case alleging that they had come to their lands and fired at father of complainant critically injuring him. After the FIR, accused, named therein, applied for pre-arrest bail, dismissed by trial Court; however, it was granted by this Court in Crl.B.A.No.S-520 of 2023 vide order dated 04.09.2023. Meanwhile, accused party also approached the police for registration of FIR, but in vain although on the very day, letters were issued by the police referring them to hospital.

3. Ultimately, they filed an application under section 22-A&B CrPC seeking directions for registration of FIR against certain accused including the applicants. The application was disposed of with

directions to record statement of accused party in the light of ratio laid down in Sughra Bibi's case, reported in **PLD 2018 SC 959**. Resultantly, on 21.08.2023, statement of Taj Muhammad and others were recorded in which applicants Sardar Khan Lakhan and Mukhtiar Ahmed have been assigned role of firing at one Zulfiqar Ali and Fahad Ali from their guns. Applicant Muhammad Akhtar is tasked with firing on Zulfiqar Ali only. From their firing, in all five persons were injured, one of whom Fahad Ali subsequently after seven months died. But his postmortem shows that he died out of injuries received through gun shot. On the basis of such counter-version, in the Challan applicants have been referred to as accused to stand a trial.

4. Learned counsel in defence have argued that applicants have been falsely implicated in this case; complainant party in the counter case is on bail; there are certain contradictions in the medical certificates and ocular account furnished by complainant party; Medico-legal Officer in medical certificates has observed that manipulation of injuries to injured Zulfiqar Ali cannot be ruled out; initially the case was disposed of and such report was submitted but then it was taken away by the I.O without submitting it in the Court and then the Challan was submitted. Such endorsement has been made by Deputy District Public Prosecutor on the Challan at the time of submitting the same in the Court; the role assigned to applicants requires further enquiry; the parties are closely related to each other; there is a civil litigation between the parties and it is settled that if in counter-case, one party has been granted bail, the other party has also a right to the same relief. To support his contentions, they have relied upon the cases reported in **2023 SCMR 330** and **PLD 2009 SC 58**, while Mr. Bozdar has relied upon the cases of **2022 SCMR 198, 2020 SCMR 956, 2011 SCMR 1997, 2023 SCMR 857, 2022 SCMR 547, 2020 PCr.LJ Note 89 and 2018 YLR Note 218.**

5. Their arguments have been rebutted by learned counsel for complainant and learned Additional P.G. Yet, learned APG has not opposed bail to applicant Muhammad Akhtar Sanghar on the ground

that medical certificate of Zulfiqar Ali, alleged to have been hit by him, is *prima facie* questionable.

6. I have considered submissions of parties and perused material available on record. Against applicants Sardar Khan and Mukhtiar Ahmed, role of causing firearm injuries to Fahad Ali and Zulfiqar Ali has been attributed by all witnesses. Before his death, Fahad Ali's statement under section 161 CrPC was also recorded. He also implicated applicants Sardar Khan and Mukhtiar Ahmed for the role, as alleged against them that they armed with the guns had hit Zulfiqar Ali and him. No doubt, in the medical certificate of Zulfiqar Ali, certain discrepancies have been recorded by MLO, but it is a settled principle of law that at the time of deciding bail application, only tentative assessment is to be made and deeper appreciation regarding authenticity of medical certificate is not allowed. Any manipulation in the medical certificate or discrepancy can only be looked into and decided by the trial Court after recording evidence and subjecting the medical officer to cross-examination.

7. Be that as it may, it is only in respect of injured Zulfiqar Ali such ground can be taken. Insofar as death of Fahad Ali at the hands of applicants Sardar Khan and Mukhtiar Ahmed is concerned. It is not *prima facie* disputed to have occurred on account of firing by applicants Sardar Khan and Mukhtiar Ahmed. Late recording of version of complainant has been properly explained by certain documents filed by his counsel, vouched for by the APG, showing that from the very start, the complainant party was trying to approach the police to give them information of their part of story, but the police under the circumstances, not explainable, did not record their FIR although from the side of this party, there were at least five injured, whereas from other side, there was only one injured.

8. Insofar as ground of counter-case and bail to other party is concerned, it not a universal principle of law that all in counter cases, if one party has been granted bail, the other party shall also be given the same relief. In the counter FIR, only one person was injured and his

injury was not so serious which fact weighed with the Court in granting bail concession to the accused. From this side, at least five persons were injured and one finally lost battle and died from the same injury, as verified by the doctor.

9. Therefore, *prima facie*, applicants are connected to the offence they are alleged to have committed. This is a pre-arrest bail, which is only meant to protect innocent persons from arrest and humiliation in a case registered against them with mala fide intentions and ulterior motives. However, there is no such element insofar as the case of applicants Sardar Khan and Mukhtiar is concerned.

10. Notwithstanding, against applicant Muhammad Akhtar, learned APG has recorded no objection, which means his custody is not required. According to him, his role requires further enquiry because of certain observations of MLO in medical certificate of injured Zufiqar Ali said to have been hit by him.

11. Therefore, while dismissing bail applications No.S-188 & 205 of 2024 filed by applicants Sardar Khan and Mukhtiar Ahmed Lakhan, on the facts and grounds, as above, I allow bail application of applicant Muhammad Akhtar. His interim-pre-arrest bail earlier granted to him by this Court is confirmed on same terms and conditions. However, interim pre-arrest bail already granted to applicant Mukhtiar Ahmed is recalled.

12. The observations made hereinabove are tentative in nature and shall not influence the trial court while deciding the case on merits.
Office to place a signed copy of this order in captioned in connected matters.

JUDGE