

ORDER SHEET  
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Application No.S- 288 of 2024

Applicant: Anwar Ali son of Karim Bux Channa through  
Mr. Nisar Ahmed Bhanbhro, Advocate.

The State: Through, Mr. Shafi Muhammad Mahar DPG

Date of hearing: **08.07.2024**

Date of Order: **08.07.2024**

**ORDER**

**Amjad Ali Bohio, J.-** Through instant application under Section 497, Cr.P.C, applicant Anwar Ali Channa seeks post-arrest bail in Crime No.45/2024, registered with Police Station Shaheed Murtaza Mirani, for offences punishable under Sections 302 & 34 PPC.

2. It is alleged that Muhammad Alam informed his brother complainant Muhammad Azam through cell phone on 28.01.2024 at 0800 hours that his (Muhammad Alam's) son Ali Hussain has been murdered. On such information the complainant with his nephew Tarique Mustafa arrived at the house of deceased Ali Hussain who had received fire arm injury and they found the blood was oozing from wounds. Father of deceased Ali Hussain informed the complainant that they woke up on fire shots at 0745 hours and found three culprits having pistols running outside the house out of whom he suspected one as Anwar alias Anoo son of Karim Bux Channa resident of Siming Channa. After post mortem and funeral, the complainant lodged FIR ON 30.01.2024 at 1500 hours.

3. Heard learned counsel for the applicant and complainant, as well as learned DPG appearing for the State and perused the material available on record.

4. Learned counsel for applicant has contended that the complainant who had lodged FIR is not eye witness of the occurrence; that father of deceased Ali Hassan has implicated the applicant/accused on suspicion as per contents of FIR but later on in his 161 Cr.P.C statement PW Muhammad Aslam stated about the applicant being real culprit without explaining or giving detail as to how he was sure about the applicant/accused being real culprit particularly when he had seen the culprits while running, therefore, case against applicant/accused is of further enquiry against whom motive has been attributed and since his arrest he is behind bar. It is urged that from contents of FIR it appears that PW Muhammad Aslam had not seen the applicant while causing fire arm injuries to deceased Ali Hassan as he has stated that on fire shorts he woke up and found that his son Ali Hassan after receiving fire injuries was lying on the ground. There is no likelihood of conviction of accused who has been implicated under suspicious, therefore, above bail application be allowed.

5. Conversely, learned DPG with the assistance of learned counsel for complainant, vehemently opposed the grant of bail to the applicant and has contended that the delay of two days in lodging FIR has been explained; that witness Muhammad Aslam recognized the applicant/accused in natural manner when he saw the accused while running outside their house and subsequently confirmed in his 161 Cr.P.C statement that applicant/accused is same amongst three culprits; that the evidence is yet to be recorded, therefore, at this early stage the applicant is not entitled for concession of bail.

6. I have carefully perused the material available on record and find that FIR has been lodged by complainant Muhammad Azam and its contents are hearsay because whatever Pw Muhammad Aslam (father of deceased Ali Hussain) narrated to him he has mentioned in the FIR. Admittedly PW Muhammad Aslam has nominated applicant being suspected accused but failed to explain at the time of recording his 161 Cr.P.C statement as to how he confirmed the applicant Anwar Ali being real culprit . His statement U/s 161 Cr.P.C before I.O was recorded on 18.02-2024 as transpire from police diaries and such delay in recording statement lost its authenticity because no explanation is furnished by I.O available on record to establish that as to why the statement u/s 161 Cr.P.C of sole eyewitness of the occurrence was recorded at belated stage after delay of about 21 days. The reliance in this regard is placed on the case of Ghulam Mustafa v. The State (2023 P Cr. L J Note 105).

7. Consequently I consider the above facts and discrepancies with regard to implication of applicant/accused initially under suspicious than with such assurance without giving any reasons of assuring about the involvement of applicant for committing above offence. The applicant/accused has therefore made out his case to be of further enquiry, therefore, I admit the accused on bail on furnishing solvent surety in the sum of Rs.2,00,000/- (Rupees two lac) and PR bond in the like amount to the satisfaction of trial Court.

8. Needless to mention here that if the applicant in any manner tries to misuse the concession of bail, it would be open for the trial Court to cancel his bail after issuing him the requisite notice.

Above are the reasons of my short order dated 08.07.2024.

JUDGE