

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

Cr. Bail Application No.S-166 of 2024

Applicants: 1. Buland S/o Ghous Bux, and  
2. Muhammad Nawaz S/o Muhammad Saleh  
Both by caste Shambani,  
through Mr. Nisar Ahmed Bhanbhro, Advocate.

Complainant: Inayatullah, through Mr. Arif Hussain Leghari,  
Advocate.

The State: Through, Mr. Aftab Ahmed Shar,  
Addl.P.G.

Date of hearing: **08.07.2024**  
Date of Order: **08.07.2024**

**ORDER**

**Amjad Ali Bohio, J.-** Through this application under Section 498 of the Cr.P.C, applicants/accused Buland son of Ghous Bux and Muhammad Nawaz son of Muhammad Saleh, seek their pre-arrest bail in Crime No.13 of 2024, registered at the Police Station Sorah, District Khairpur, for offences punishable under Sections 302, 147, 148, and 149 of the P.P.C. Bail before arrest of the applicants has been declined by trial Court vide impugned order dated 18.03.2024. After completion of investigation, challan has been submitted by police, which is now pending trial before the Court of learned Additional Sessions Judge-I/ (MCTC), Khairpur bearing Sessions Case No. 243 of 2024 [ Re: State v. Anwar and another].

2. Prosecution story states that the deceased, Allan Khan Shambani, contracted a love marriage with the daughter of Hubdar Shambani. The allegations against the applicants are that complainant Inayatullah arrived at Allan Khan's house on the evening of 20.02.2024. That night, Abdul Raheem, Abdul Haq, and other house inmates went to asleep after having their meals. They woke up on the noise of barking dogs at 0100 hours on 21.02.2024. By

torchlight, they saw and identified the accused Hubdar, Buland, Photo, Ayaz, Muhammad Nawaz, and two unknown culprits, all armed with pistols. The accused controlled the house inmates, and applicants Buland and Muhammad Nawaz fired straight shots at Allan Khan with the intention to kill him. The bullets hit Allan Khan on different parts of his body. The house inmates raised cries, attracting neighbors, which caused the accused to flee towards northern side. Allan Khan sustained firearm injuries over his face, right shoulder, right armpit, and left shoulder, which were bleeding. He succumbed to his injuries on the spot. The postmortem of the body was conducted, and after the funeral ceremony, the complainant lodged the FIR at 0100 hours on 22.02.2024.

3. Contentions raised by the counsel for both parties have been taken into account and I have gone through the case papers.

4. Mr. Nisar Ahmed Bhanbhro, learned Advocate for the applicants, has contended that there is a delay of 24 hours in lodging the FIR; that the applicants were declared innocent during investigation and their names were kept in column II on the basis of reports (CDR) collected and recording statements of independent witnesses; that all the prosecution witnesses are closely related to the complainant and are interested; that the accused were identified by torchlight, which is a weak source of identification. Lastly, he has contended that the applicants are entitled to the concession of bail on the plea of *alibi*. In support of his contentions, he has relied upon the case of *Mujahid Hussain and another v. The State through Prosecutor General, Punjab, Lahore and another (2024 SCMR800)*, *Fahad Hussain and another v. State through Prosecutor General Sindh (2023 S C M R 364)* and *Khair*

Muhammad and another v The State through P.G. Punjab and another (2021 S C M R 130).

5. Conversely, learned Addl. Prosecutor General assisted by learned counsel for the complainant while supporting the impugned order contended that the applicants have been nominated in the F.I.R with specific role of causing straight fire shots with pistols which hit different parts of the deceased's body; that the offence with which the applicants stand charged carries capital punishment and does not fall within the scope of section 497(1), Cr.P.C. hence, they are not entitled for concession of bail; that the I.O, exonerated the applicants from the charge on the basis of statements of defence witnesses, ignoring the 161 Cr.PC statements of eye witnesses who have implicated the applicants with commission of alleged offence; that call data record (CDR) relied by I.O was without signature and would amount deeper appreciation of evidence which is not permissible at bail stage. He argued that the delay of one day in lodging the FIR has been fully explained by the complainant as deceased's body was shifted to the hospital, and after conducting the postmortem, it was brought back to the village. Following the funeral ceremony, the complainant lodged the FIR. Lastly he contended that the ocular account of evidence is fully corroborated by medical evidence, therefore, the instant bail application is liable to be dismissed. In support of their contention, they relied upon the case of Allah Bachayo v The State (2009 S C M R 1353), Ghulam Ahmed Chishti v The State (2012 S C M R 649), Riaz Ali v The State (2008 S C M R 884), Muneer Ahmed alias Fazalullah v The State (2008 Y L R 1544), Muhammad Hanif v The State (2013 P.Cr.L.J 1105), Sabir Hussain v The State (2016 P.Cr.L.J 1120), Ashique Ali Chandio v The State (2016 M L D 1377) and Shahnawaz v The State (2016 Y L R 2842).

6. From tentative assessment of the record available with the prosecution it appears that the applicants are nominated in the F.I.R with the specific role of causing firearm injuries to the deceased and the post-mortem report of the deceased also suggests four wounds of entry viz:

1. **Entry:-** *Lacerated punctured wound on right ® side of cheek anteriorly measuring 2.5 cm x diameter margins are inverted, blackening are present.*
2. **Entry:-** *Lacerated punctured wound on right ® side of Axilla measuring 2 cm x diameter margins are inverted.*
3. **Entry:-** *Lacerated punctured wound on left (L) side of shoulder anteriorly measuring 1.5 cm x diameter margins are inverted blackening is present.*
4. **Entry:-** *Lacerated punctured would on right ® side of Axilla measuring 1.5 cm x diameter margins are inverted.*

Thus, according to the postmortem report, Allan Khan received four firearm injuries, and the I.O. also collected four empty shells of pistol of 30 bore from the place of occurrence. The ocular account of evidence is corroborated by the medical evidence regarding the firearm injuries caused to Allan Khan, which are attributed to the applicants and prima facie connect them to committing the offence, which carries a capital punishment falling within the Prohibitory Clause of Section 497, Cr.P.C. Enmity between the parties is an admitted fact. Besides the complainant, there are two other eye-witnesses who have fully implicated the applicants with commission of alleged offence. Mere relationship of the complainant with witnesses is not enough to disbelieve them at bail stage as they appear to be natural witnesses to the incident. Reliance is placed upon the case of Wazeer Ali v. State ( 2019 P.Cr.LJ N 24) [Karachi]. It further appears that case of co-accused who are were admitted to pre-arrest bail by the trial Court, is on different footings as no specific role has been assigned to them in the F.I.R, therefore, rule of

consistency would not be applicable in the case of the applicants. As regard delay of 24 hours in lodging of F.I.R, it has been stated in the F.I.R that after informing police about the incident and getting the post mortem of the deceased and funeral ceremony, the complainant lodged the F.I.R; hence plausible explanation prima facie is available on record. Even otherwise delay in F.I.R, is not ipso facto a ground for grant of bail. The reliance in this regard is placed on the case of Wazir Ali v. The State (2023 YLR 1582).

7. During the investigation, the I.O., relying upon Call Data Record (CDR) and statements from independent witnesses, placed the applicants' names in column No. 2 of the charge sheet based on a plea of *alibi*. Neither the Call Data is duly signed by the person who generated it nor was such person associated as witness in this case, thereby opinion of I.O is not based upon sound material as a relevant circumstances for a just decision of bail. The learned Magistrate did not agree with the I.O's opinion by applying his judicial mind, referencing the case of Bakhsh Ali v. State reported in 2013 YLR 1948. Furthermore, the I.O's opinion regarding placing the accused in Column-2 is not binding upon the Court and opinion of I.O cannot be accepted to exonerate the accused from the commission of the offence as held in the case of Qudrat Bibi v. Muhammad Iqbal (2003 SCMR 68). Such plea even otherwise cannot be considered at the bail stage, as held in the case of Naseemullah Khan v. State ( 2023 YLR N 41). It is also held in the case of Raza Muhammad and another v. The State (2024 YLR 359) that the opinion/report of Investigation Officer does not bind the court in any manner yet, the courts can peep into its persuasiveness and vitality for the purpose of grant or refusal of bail tentatively to the accused.

8. The facts of the case law relied upon by the counsel for the applicants/accused are quite distinguishable from the facts of the present case. It is settled law that in criminal matters, each case has its own peculiar facts and circumstances and the same has to be decided on its own facts as held in the case of Amir Faraz v. The State (2023 SCMR 308). In this case as per record, both applicants, in a pre-planned manner, entered the house of the deceased and fired upon Allan Khan. The ocular account of evidence is corroborated by the medical evidence regarding the firearm injuries caused to Allan Khan, which are attributed to the applicants and prima facie connect them to committing the offence, which carries a capital punishment falling within the Prohibitory Clause of Section 497, Cr.P.C.

9. As regards grant of pre-arrest bail, in the case of Rana Muhammad Arshad v. Muhammad Rafique (PLD 2009 SC 427) principles for grant of concession of pre-arrest bail have been defined as under:

(a) grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives;

(b) pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;

(c) bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of section 497 of Code of Criminal Procedure i.e. unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and that there were, in fact, sufficient grounds warranting further inquiry into his guilt;

(d) not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motive, particularly on the part of the police; to cause irreparable humiliation to him and to disagree and dishonor him;

(e) such a petitioner should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity i.e. he had no past criminal record or that he had not been a fugitive at law; and finally that;

(f) in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest, must, in the first instance approach the Court of first instance i.e. the Court of Session, therefore petitioning the High Court for the purpose.

10. For the foregoing facts and reasons, I am of the prima facie view that sufficient evidence is available against applicants Buland and Muhammad Nawaz to connect them with the commission of alleged offence, carrying capital punishment for death and/or imprisonment for life. Consequently, the bail application moved on behalf of accused Buland and Muhammad Nawaz is without merit and is dismissed. The interim pre-arrest bail already granted to the applicants/accused Buland and Muhammad Nawaz vide order dated 21.03.2024 is recalled.

11. Needless to mention here that the observations made hereinabove are tentative in nature, and the trial court shall not be influenced by such observations while deciding the case on merits.

JUDGE