

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Cr. Bail Application No.S-230 of 2023

Date	Order with signature of Judge
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Applicant: Samiullah Chachar, through
Mr. Abdul Razzaque Mahar, Advocate

Complainant: Hazoor Bux Chachar, Through
M/s Ubedullah Ghoto and Naemuddin
Chachar, Advocates

Respondent: The State, through Khalil Ahmed
Maitlo, Deputy Prosecutor General

Date of hearing: **02-10-2023**

Date of **Decision**: **02-10-2023**

O R D E R

Arbab Ali Hakro, J: Through this bail application under Section 497 Cr. P.C., applicant Samiullah son of Ali Anwar by caste Chachar, seeks admission to post-arrest bail in Crime No.08/2022, registered against him on 19.05.2022, at Police Station Katcho Bindi-I, District Ghotki, under Sections 302, 324, 147, 149, 114 and 504 PPC. The applicant had previously applied for post-arrest bail in Bail Application No.1051/2021, but the same was dismissed by the Additional Sessions Judge-I (MCTC) Ghotki, vide order dated 30.07.2022. Later on, the applicant filed the second bail application on fresh ground, which was also dismissed by Additional Sessions Judge-I (MCTC) Ghotki, vide order dated 11.03.2023. Hence, the applicant approached this Court by filing an instant bail application.

2. Precisely the prosecution case is that previously, there had been exchange of hot words between co-accused Ali Anwar and complainant over the matter of children, and since then, the accused party used to issue threats of dire consequences to the complainant party. On the day of incident viz 19.05.2022,

complainant along with his brothers Ali Muhammad, Nawab Ali, son Amanullah and cousin Waheed Ali, were available at the Otaq when, at about 1045 hours suddenly accused Ali Anwar empty-handed, Mumtaz Ali with lathi, Moula Dino, Samiullah (present accused), Abdul Rehman, Ihsan Ali, and Rafique Ahmed, all by caste Chachar having lathis came there and on the instigation of accused Ali Anwar, accused Mumtaz Ali caused lathi blow to Ali Muhammad which hit him on the back side of his head, accused Moula Dino caused him lathi blow which hit him on right side of his head, accused Samiullah caused lathi blow which hit him above the left eye, who while crying fell down on the earth. Thereafter, accused Abdul Rehman caused lathi blow to the brother of complainant Nawab Ali, which hit him on the right side of his head, and blood started oozing; accused Ihsan Ali caused lathi blow to the brother of complainant Nawab Ali, which hit him on his back, accused Rafique Ahmed caused lathi blow to Amanullah which hit him on the left leg. Complainant and Waheed beseeched them in the name of Almighty Allah, on which they went away using abusive language. After that complainant brought the injured to Police Station, from where he received a letter for treatment and went to Taluka Hospital Sukkur, from where Ali Muhammad was referred to Civil Hospital Sukkur for further treatment, but he succumbed to injuries on the way, hence his dead body was brought at Taluka Hospital Ghotki where postmortem was conducted and after getting free from funeral ceremony, complainant appeared at Police Station and lodged such FIR.

3. At the very outset, it has been argued by the learned Counsel for the applicant that the applicant is innocent and has been falsely implicated in this case, that there is inordinate delay of about 12 hours in registration of FIR, which has not been explained by the complainant; that as per contents of FIR the applicant is attributed the role of causing injury upon the left eye of deceased which is simple in nature and according to postmortem report same is not fatal to cause death; that

vicarious liability of present applicant will be determined at the time of trial; that co-accused Ihsan Ali, Rafique Ahmed have already been granted post-arrest bail by this Court while co-accused Ali Nawar and Abdul Rehman have been admitted to pre-arrest bail by this Court. Lastly, he submits that the applicant is behind bars since the date of his arrest and is no longer required for further investigation, and as such, no useful purpose would be served by his further detention in jail.

4. Conversely, the learned Deputy Prosecutor General appearing for the State and assisted by learned Counsel for the complainant vehemently opposed the bail application, contending that the name of the applicant appears in the FIR as well as in 161 Cr. P.C. statements of the P.W.s with specific role of causing injury to deceased and the offence carries capital punishment; that the medical evidence is in consonance with the ocular version, therefore no case has been made out by the applicant for further enquiry as laid down u/s 497(2) Cr. P.C., therefore, the applicant is not entitled for a grant of bail. In support of their contentions they placed reliance on the case of Syed Hamad Raza v. The State and others (2022 SCMR 640), Muhammad Sharif v. The State and another (2022 MLD 106), Sabir Hussain and another v. The State (2016 P.Cr.L.J 1120), Rab Nawaz and 2 others v. The State (2015 Cr. L.J. 1531), Muhammad Rafique and 4 others v. The State through Advocate General (2008 P.Cr.L.J 351), Ameer Bux v. The State (2021 YLR Note 138), Mumtaz v. The State (2012 SCMR 556) Allah Bux and 2 others v. The State (2019 P.Cr.L.J Note 82), Muhammad Baqir v. The State and another (2022 SCMR 363), and Sidra Abbas v. The State and another (2020 SCMR 2089).

5. I have heard learned Counsel for the applicant, learned DPG for the State, learned Counsel for the complainant, and carefully examined the material available on record.

6. This unfortunate incident took place on 19.05.2022 at 1045 hours in the morning time in which the deceased sustained

injuries and went to Taluka Hospital Sukkur, from where he was referred to Civil Hospital Sukkur for further treatment but he succumbed to the injuries; hence the delay is well explained. The applicant is nominated in the FIR with the specific role of causing lathi blow over the left eye of the deceased, which prima facie, suggests his participation in the occurrence and had shared the common intention to take the life of the deceased. Eyewitnesses of the incident have recorded their 161 statements in which they fully implicated the applicant with the commission of alleged offence. The ocular version is further supported by the medical evidence. The alleged presence of applicant with the co-accused at the crime scenes where one person was murdered and the other sustained injuries has not been denied. It is worth to note here that the roles of co-accused Ihsan Ali and Rafique Ahmed were mere presence at the place of incident without any overt act that is entirely distinct from the role of the present applicant; hence, the rule of consistency is not applicable to the case of present applicant.

7. An order granting bail would be perverse and contrary to the principles of law if the same was passed by ignoring material evidence on record and without giving reasons; however, there is no such material or evidence on record which attracts the Court to grant bail to an accused, his involvement, as well as a presence at the place of incident and active role in the commission of offence, did not refute from any corner; hence, bail cannot be granted on the sole ground that injury caused on the body of deceased was not fatal. In this context, the reliance can be placed on the cases of **Sami Ullah and another v. Laiq Zada and another 2020 SCMR 1115; The State/Anti-Narcotic v. Rafique Ahmed Channa 2010 SCMR 580 and Puran v. Rambilas (2001) 6 SCC 338 ref.**

8. In the sequel to above, the instant Cr. Bail Application is dismissed. The facts and circumstances of the case law so relied upon by learned Counsel for the applicant are distinguishable from the present case.

9. The observations made herein above are tentative in nature and shall not prejudice the case of either party on merits at the trial.

JUDGE

Faisal Mumtaz/PS