

ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No. S- 800 of 2023

(*Abdul Haq Shaikh Vs. The State*)

1. For Orders on office objection.
2. For Orders on MA No. 6939/2023 (Ex./A)
3. For hearing of Bail Application.

19-02-2024.

M/s Ghulam Murtaza Buriro and Hamid Ali Memon, advocates for the applicant.

Complainant Abdul Rahim Shaikh in person.

Syed Sardar Ali Shah Rizvi, Additional PG for the State.

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1. Over ruled.
2. Granted subject to all just legal exceptions.
3. The facts in brief necessary for disposal of instant Crl. Bail Application are that Babar Ali who happened to be son of complainant Abdul Rahim gone to attend his college, but did not return to his home; on search, he was found to be in contact with Aamir Abbas, Mst. Bushra and Mst. Anila. Later-on, the complainant lodged an FIR with PS C-Section Sukkur alleging abduction of his son Baber Ali at the hands of above named culprits; subsequently, a dead body was recovered by the police from Gate No.II of Sukkur Barrage, it was identified by the complainant to be of his son Baber Ali; such identity was confirmed through DNA test. Later, on investigation it was disclosed by PW Qamar Din that he has seen the deceased lastly in company of Sumair alias Muhammad Chanesar, Sajid, Ali Gul and two unknown culprits at Pirzada Park Sukkur and they promised with the deceased to get employment for him. Further statement of the complainant to such effect was also recorded by the police. On arrest, co-accused Sumair alias Muhammad Chanesar made a statement u/s 164 Cr.P.C whereby he confessed that he and his father/the applicant after committing death of Baber Ali by causing him fists and kicks blows have thrown his dead body in Indus River. On the basis of such confessional statement, the applicant was arrested and challaned by the police.

At trial, the applicant sought for his release on bail by making such application, it was dismissed by learned IIIrd Additional Sessions Judge Sukkur, it is in these circumstances, the applicant by way of listed application u/s 497 Cr.P.C, has sought for his release on bail from this Court.

It is contended by learned counsels for the applicant that the name of the applicant is neither appearing in FIR, nor in further statement of the complainant; he has been involved in commission of the incident on the basis of 164 Cr.P.C of statement of his son Sumair alias Muhammad Chanesar, which could not be used against him as evidence; therefore, he is entitled to be released on bail on point of further inquiry. In support of their contention, they relied upon the case of *Javid Khan Vs. Arshid Khan and another (PLD 2024 Supreme Court 73)* and *Abdul Majid Afridi Vs. The State and another (2022 SCMR 676)*.

Learned Additional P.G for the State who is assisted by the complainant has opposed to release of the applicant on bail by contending that he is involved in commission of incident by his own son and case is ripe for evidence.

Heard arguments and perused record.

Admittedly the name of the applicant is neither appearing in FIR nor in further statement of the complainant. It was disclosed by co-accused Sumair alias Muhammad Chanesar by way of his 164 Cr.P.C statement; such statement if is believed to be true, even then could hardly be used as evidence against the applicant. No violence was found on the dead body of the deceased. The actual cause of death of the deceased has remained undetermined. The case has finally been challaned and there is no likelihood of absconsion or tampering with the evidence on the part of the applicant. In these circumstances a case for release of the applicant on bail on point of further inquiry obviously is made out.

In view of above the applicant is admitted to bail subject to furnishing solvent surety in sum of Rs.200,000/- (Two lac) and P.R bond in the like amount to the satisfaction of learned trial Court.

The instant bail application is disposed of accordingly.

Judge

Nasim/P.A