

ORDER SHEET

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

**Cr. Bail App. No. S – 829 of 2023**

Date of hearing

Order with signature of Judge

**Hearing of bail application**

1. For orders on office objection at Flag-A
2. For orders on MA No.7106/2023 (Ex./A)
3. For hearing of bail application

**23.02.2024**

Mr. Muhammad Qasim Kandhro, Advocate for applicant.  
Mr. Gulshan Ahmed Shujrah, Associate of Mr. Nisar Ahmed Bhanbhro, Advocate for complainant.  
Mr. Aftab Ahmed Shar, Additional Prosecutor General.

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**Muhammad Iqbal Kalhoro, J. –** It is alleged in FIR that on 17.05.2023 when complainant, his brothers Abdul Hameed and Abdul Haq and friend Mushtaque Ahmed Mahar were returning to their village on two motorcycles from Khairpur, they were waylaid by six accused duly armed with weapons on a link road near Metla Chowk within precincts of Police Station Baberloi, who on the show of weapons committed robbery from them of different articles including cash and mobile phones. Out of six accused, two accused were identified to be Altaf Hussain and Sadam by caste Mangria. During course of robbery, on resistance, the aforesaid nominated accused fired upon brother of the complainant Abdul Hameed critically injuring him. When the complainant party raised cries, the accused decamped.

2. The injured succumbed to his injuries and died at the spot. The FIR on 19.05.2023, after two days of the incident, does not disclose name of the applicants. However, on 20.05.2023 complainant's further statement was recorded naming co-accused Sarfaraz Ahmed and applicant Shaman alias Shamo. The latter was arrested and recovery of a pistol and other items was effected from him. Again on 10.06.2023, a second further statement of complainant was recorded in which he has disclosed the name of co-accused Zamir Hussain and applicant Asghar Ali alias Ghulam Asghar. The latter was arrested and recovery of a pistol and incriminating articles was also made from him.

3. Learned Counsel for applicants has pleaded for bail on the grounds that that there is delay of two days in lodging FIR, for which no plausible explanation has been furnished; that applicants are not nominated in FIR and their names have been disclosed in two separate further statements but the source is not disclosed; that co-accused Sarfaraz Ahmed has been granted pre-arrest bail by this Court vide order dated 25.09.2023.

4. On the other hand, learned counsel for the complainant has opposed bail on the ground that there is sufficient evidence against the appellants.

5. I have considered submissions of the parties and perused the record. In FIR, names of the applicants are not mentioned, which was registered after two days of the incident viz. 19.05.2023. On the same day, statements of witnesses were also recorded, but none arrayed the applicant as accused. On the next date viz. 20.05.2023 and on 10.06.2023, complainant *prima facie* on the basis of some source, which he has not disclosed, named applicants Shaman alias Shamo and Asghar Ali alias Ghulam Asghar, respectively, in addition to other persons to be accused in the offence without assigning them any part. The second further statement was recorded on 10.06.2023 after a delay of more than 23 days of the incident.

6. Applicant Shaman alias Shamo was arrested on 01.06.2023, and *prima facie* the recovery of a pistol and bullets was made from him on 08.06.2023 and a mobile phone and NIC of witness Mushtaque was effected on 15.06.2023. When applicant Asghar Ali alias Ghulam Asghar was arrested and recovery of a pistol, bullets, mobile phone and photostat copy of documents of robbed motorcycle was effected from him, is *prima facie* not mentioned anywhere in the record. The applicants are said to be co-villagers of the complainant, yet he did not take their names in the FIR and referred to them as unknown. Then in his further statements dated 20.05.2023 and 10.06.2023 he disclosed their names and made them accused in the case. The delayed introduction of the accused in the case despite the fact they being co-villagers were known to the complainant party and delay in recovery of incriminating articles from them are the facts which need further enquiry.

7. In the circumstances, the involvement of the applicants on the basis of some motive not relevant to the case cannot be ruled out. A case of further inquiry is made out consequently. Hence, this application is **allowed**, and applicants are **granted** post-arrest bail subject to their furnishing a solvent surety in the sum of Rs.2,00,000/- (Rupees two lac) each and PR bond of the same amount to the satisfaction of the trial Court.

8. The observations made hereinabove are tentative in nature and shall not influence the trial Court while deciding the case on merits.

The bail application stands **disposed of** in the above terms along with pending application.

J U D G E

Abdul Basit