

**IN THE HIGH COURT OF SINDH AT KARACHI**

Crl. Bail Application No. 1861 of 2023

Crl. Bail Application No. 1993 of 2023

Applicants : Bawar and Muhammad Naeem Khan  
through Mr. Hussain-Ul-Aziz, Advocate  
along with applicant Bawar

Respondent : The State  
through Mr. Saleem Akhtar Buriro,  
Additional Prosecutor General Sindh

Complainant : through Mr. Muhammad Nazirullah Mehsood,  
Advocate along with complainant

Date of hearing : 04-03-2024

Date of order : 15-03-2024

**ORDER**

**OMAR SIAL, J:** Mohammad Naeem Khan has sought post-arrest bail in crime number 377 of 2022 registered under sections 392, 397, 302 and 34 P.P.C. at the Iqbal Market police station in Karachi. Bawar has sought pre-arrest bail in the same case. Their respective bail applications filed before the learned 12<sup>th</sup> Additional Sessions Judge, Karachi West were dismissed on 29.08.2023 and 22.08.2023 respectively.

2. The F.I.R. mentioned above was registered on 25.09.2022 on the complaint of Haji Muhammad. Haji reported that he was informed over the phone that his brother Ismail was eating *pulao* at a shop where already three persons were sitting on a motorcycle. Two persons got off the motorcycle with pistols and robbed the shop owner of Rs. 70-75,000 rupees. Another boy sitting closeby named Ismail resisted the robbers when they were depriving him of his phone causing the robbers to open fire and kill him.

3. I have heard the learned counsels for the applicants and the complainant and the learned Additional Prosecutor General. My observations and findings are as follows.

4. The owner of the shop (Ghaffar) nor his helper (Abdul Rehman) have identified either applicant as being from the three boys who were sitting on a motorcycle and who subsequently robbed Ghaffar and killed Ismail.

5. On 27.05.2023, that is eight months after the incident, one person by the name of Qadir Khan appeared and recorded a statement to the effect that he was a rickshaw driver and on 25.09.2022 he was eating pulao at the same shop when two persons came and robbed the shop owner and killed a person. When fleeing from the site, the shooter referred to his accomplice as "Naeem". This is the evidence for which Naeem is in jail at the moment. No explanation was provided by the counsel to justify the delay in recording the section 161 statement. No description of the robbers was given by Qadir Khan in his statement.

6. The evidence against Bawar is that another co-accused, Ehsanullah, had named Bawar as being one of the robbers. Ehsanullah was detained on 26.10.2022. He told the police that two persons named Naeem and Bawar live in his area and that they are robbers and that he has heard in his neighborhood that they had killed a person during a robbery attempt. Ehsanullah was granted bail on 13.12.2022. Surely, if a co-accused, who named the two others, and that too on the suspicion that "he had heard from the neighborhood people" that the remaining two had robbed and killed, was granted bail, the person he named should also be entitled to the same concession, in view of no other evidence having being collected against Bawar and Naeem. The admissibility of the statement of a co-accused is another area which requires to be established.

7. The pistol supposedly left behind at the scene of the crime was a licensed pistol and belonged to somebody (not nominated as an accused) in Larkana. On his recording a statement that the pistol issued against his license was in his possession and thus his license was wrongly used by the accused was sufficient for the investigating officer to not interrogate him

any further or verify whether what he told the investigator was correct. No one from the Home Department or otherwise was interrogated in this regard.

8. Malafide is a pre-requisite for the grant of bail. In the circumstances of the case and after tentatively reviewing the evidence, I am unable to conclusively eliminate malafide on the part of the police.

9. Given the above, Naeem Khan is admitted to post arrest bail against a solvent surety of Rs. 100,000 and a P.R. Bond in the like amount to the satisfaction of the learned trial court, whereas the interim pre-arrest bail granted to Bawar is confirmed on the same terms and conditions.

JUDGE