

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No.S-869 of 2023
Crl. Misc. Application No.S-203 of 2023

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
-----------------	--------------------------------

1. For orders on O/objection at flag-A.
2. For hearing of bail application.

Date of hearing **22.01.2024**

Mr. Qurban Ali Malano, Advocate for applicant in Crl. Bail application No.S-869 of 2023.

Mr. Shabir Ali Bozdar, Advocate for complainant and for applicant in Crl. Misc. Application No.S-203 of 2023.

Mr. J. K Jarwar, Advocate for respondent No.2 in Crl. Misc. Application No.S-203 of 2023.

Syed Sardar Ali Shah, Addl.PG Sindh for state.

ORDER

ZULFIQAR ALI SANGI, J; By this common order, I intend to dispose of aforementioned Applications as same are arising out of same FIR and common question of law as well as facts are involved.

The applicant Sikandar Ali alias Sikandar in captioned Crl. Bail application seek his admission on post-arrest bail in Crime No.03 of 2023 registered at Police Station, Khambra under Sections 302, 337H(ii), 147, 148, 149 after his bail application was declined by Additional Sessions Judge/MCTC, Ubauro vide order dated 22.11.2023, while the complainant Palya Hussain filed Crl. Misc. A. No.S-203 of 2023 against accused/respondent namely, Umar Bakhsh for cancellation of his pre-arrest bail granted by the Court of Additional Sessions Judge/MCTC, Ubauro vide order dated 20.03.2023.

2. It is the case of prosecution that one Gadali aged about 63 years was the father of the complainant who alongwith complainant and one Shahro Khan Mazari was working as labourer on the sugarcane crop. On 07.01.2023 he started cutting sugarcane crop of their relative

Muhammad Nawaz Mazari at village Mandost Mazari where at about 1200 hours accused Umer Bux, Ghaffar and Moatabar all were armed with lathis, Sharif and Sikandar both armed with K.Kovs came they restrained them from cutting the sugarcane crop by saying that they have dispute with Yar Ali Mazari over the said land and said Yar Ali is brother of Muhammad Nawaz Mazari. It is further stated that in the meanwhile accused Moatabar Mazari instigated co-accused not to spare complainant and commit murder. On his instigation, Umer Bux caused lathi blows and accused Sikandar Mazari caused butt blows of K.Kov to Gadali on his head and other parts of body due to which he fell down and thereafter the accused persons went away while making aerial firing for harassment. Then the complainant party took the injured to Police Station, obtained letter for treatment and then went to Taluka Hospital Ubauro for treatment from where the injured was shifted to Shaikh Zaid Hospital Rahimyar Khan, where he succumbed to his injuries and then complainant brought his dead body to Talukla Hospital Ubauro. After postmortem they took the dead body to the house and then appeared at Police Station where such FIR was registered.

3. Learned counsel for the applicant submits that there is delay of about One day in registration of FIR and the same has not been explained by the complainant; that enmity is admitted in the FIR over reaping of crop; that no incriminating evidence has been collected by the I.O, in the alleged offence and no recovery was effected from the applicant; that co-accused Umer Bakhsh whose role is identical to the present applicant has been granted bail by the trial Court therefore, rule of consistency is applicable to the case of present applicant; that as per postmortem the deceased has received only one injury however, role attributed against co-accused Umer Bux and present applicant which is to be determined at the time of trial. By stating so, he prayed for grant of bail.

4. Syed Sardar Ali Shah, learned Additional Prosecutor General assisted by Mr. Shabir Ali Bozdar, counsel for complainant opposed the bail on the ground that applicant is nominated in the FIR with specific role of causing butt blows to deceased Gadali resultantly deceased died due to said injury which is supported by postmortem; that deeper appreciation of evidence is not permissible at bail stage;

that within the sight of complainant party accused Umer Bux and present applicant had caused injuries on vital part of the body of deceased and caused his death hence they are not entitled for bail. In support of his contention reliance is placed on the case of *Muhammad Jehangir Khan and others v. The State and others (2020 SCMR 1270)*.

5. Heard learned Counsel for the parties, perused the material available on record with their able assistance.

6. Perusal of record reflects that there is delay of about one day in lodging of the FIR for which no explanation has been furnished by the complainant. Perusal of record reveals that as per postmortem the deceased has received only one injury but the complainant alleged in the FIR that accused Umer Bux and present applicant caused separate injuries to the deceased which creates very serious doubt. It will be very difficult to hold that which of the accused had caused such injury to the deceased and it will be determined at the time of trial hence, case of present applicant requires further inquiry. No tangible material has been collected nor recovery of crime weapon has been effected from the present applicant. The co-accused namely, Umar Bux whose role is identical to the case of present applicant has been granted bail by the trial Court and the trial Court in its order dated 20.03.2023 while granting bail to co-accused Umar Bux as observed that *“the special assessment of the record made available shows that as per FIR accused/applicant Umar Bux caused lathi blow to the deceased on his head and also co-accused Sikandar caused butt blow of K.Kov to the deceased on his head. The above position prima facie reflects that 2 blows were caused to the deceased on his head by 2 different accused persons, but surprisingly the medical Officer in his postmortem report has shown only one injury on the head of deceased. The police letter issued to the medical officer for treatment of the injured including the mashirnama of injuries on the person of injured also show only one injury on the head of deceased. The above position shows that one injury is attributed to the two accused persons and it is difficult to hold that which of the accused had caused such injury to the deceased. This fact alone makes the case of accused/applicant one of further inquiry into his guilt because deeper appreciation is not required to be ensured at the bail stage, therefore, I am of the considered view that accused/applicant is entitled for concession of*

bail at this stage". Thus, without going into further details, I find that the applicant/accused in the above stated circumstances is entitled to the grant of bail on the rule of parity. Under these circumstances bail application is allowed.

7. The upshot of above discussion is that the applicant has successfully made out a good *prima facie* case for further inquiry within the meaning of Sub-Section (2) of Section 497 Cr.P.C as such is entitled to bail and for this reason the applicant/accused **Sikandar Ali alias Sikandar** was admitted to bail subject to furnishing his solvent surety in the sum of Rs.200,000/- (Rupees two lacs) and PR bond in the like amount to the satisfaction of the trial Court.

8. So far as the Crl. Misc. Application No.S-203 of 2023 in respect of accused/respondent Umar Bux Mazari is concerned, once bail is granted by a Court of competent jurisdiction, then very strong and exceptional grounds would be required for cancelling the same. Indeed, without having any material before the Court that concession of bail was misused or accused person absented or avoided judicial process the bail cannot be cancelled. There is no complaint against respondent even applicant has failed to point out any illegality in the impugned order. Therefore, I am of the firm view that there is no illegality or any infirmity in the impugned order dated 20.03.2023 passed by learned Additional Sessions Judge, Ubauro hence, same is maintained and Crl. Misc. application was dismissed.

Above are the reasons of my short order dated 22.01.2024.

J U D G E

*Ihsan/**