IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Bail Application No.S-1377 of 2024

Applicant:	Ali Nawaz through M/s. Haq Nawaz Talpur and Uzair Rasool, Advocate.
Complainant:	Muhammad Aslam in person.
Respondent:	The State through Ms. Sana Memon, Assistant Prosecutor General, Sindh along-with ASI Muhammad Yakoob Lakho PS Lundo District Sanghar.
Date of hearing:	31.01.2025.
Date of decision:	28.02.2025

ORDER

MUHAMMAD HASAN (AKBER), J.- By this order, Criminal Bail Application under section 497 Cr.P.C. for grant of post-arrest bail to the applicant is being decided, whose bail application was earlier declined by the learned Additional Sessions Judge-I/(MCTC) Tando Adam vide Order dated 20.11.2024.

2. It was alleged in the FIR dated 24-02-2024 lodged by Muhammad Aslam that he has bad blood with Asif over matrimonial issues. On 23.02.2024, he and his paternal cousins Miskeen and Farman Ali were sitting at his shop. His two uncles Murad Ali (55 years) and Ghulam Shabbir (45 years) were travelling to their village from Shahdadpur via Link Road Khadim Hussain Zardari by motorcycle. At 03:00 p.m. when they reached at the field of Ghulam Shabbir Khaskheli, six armed individuals suddenly emerged identified as Asif, Ali Nawaz, Gul Muhammad alias Kamani, Ghulam Muhammad alias Sikaalo and two unidentified, each one of them armed with Kalashnikov, G-3 rifle and pistols as specifically mentioned in the FIR, indiscriminately started firing on Murad Ali and Ghulam Shabbir. Resultantly,

firearm injuries were received at arm, back, abdomen and other parts of Murad Ali whereas Ghulam Shabbir was injured at his back, chest, abdomen and legs and as a result, both persons died. Consequently, the aforesaid F.I.R. was lodged under sections 302 and 34 P.P.C. The accused persons were arrested on 28-01-2024 and 31-01-2024.

3. Heard learned counsel for the applicant and learned APG and perused the record with their assistance.

4. The first ground contended by the learned counsel for the applicant is that the complainant and the accused persons are related to each other and there is old enmity and bad blood between them. He argued that legal heirs of the two deceased persons have compromised and pardoned the applicant and in this regard Affidavits dated 06-11-2024 were sworn by some of the legal heirs of the deceased Murad Ali and Ghulam Shabbir, however the learned Additional Sessions Judge refused to grant post-arrest bail and rejected application under section 497 Cr.PC. vide Order dated 20-11-2024 on the ground that permission of the Court as required under section 345(2) Cr.P.C was not obtained, in accordance with law. He further argued that although accused have been named in the FIR, however no independent specific role has been attributed to the accused persons but general allegations have been levelled. He further submitted that trial has commenced and custody of the accused is no more required for investigation. Reliance was placed upon 2024 SCMR 1525, 2024 PCrLJ 1499, 1997 SCMR 1411, 2022 SCMR 1245.

5. Conversely, the learned APG opposed the application for bail and supported the Order dated 20-11-2024 while contending that the applicant has been directly and specifically named in the FIR and as a result of the firing of the accused persons, two persons have died. Further contends that the cases, falling under section 345(2) of the Cr.P.C. can only be compounded through Court's sanction, as envisaged in column 3 of section 345(2) of the Cr.P.C., whereas any purported compromise made outside the Court is of no value. Learned APG further argued without prejudice to the above that the affidavits of all the legal heirs of the two deceased persons were also not filed and there were many minors included in the list of legal heirs, whose rights are also to be protected, and states that all these factors can be duly verified and looked into by the learned trial Court.

6. I have given due consideration to the arguments put forth by both the sides. The first question for determination would be with respect to grant of benefit of affidavits/ (purported) compromise in favour of the accused, at the stage of hearing of bail application. In this regard, sub-section (2) of section 345 Cr.P.C. deals with cases in which the offences specified therein can be compounded, but only with the permission of the Court, and any compromise arrived at between the parties on their own at any stage is not to take effect automatically, without Court's sanction. On this subject, the jurisprudence as evolved in Pakistan so far, begins with the case of *'Syed Iftikhar Hussain Shah v. Syed Sabir Hussain Shah and others'* [1] when a 2-member Bench of the Supreme Court declared that, a compromise in a criminal case entered into at the stage of bail is to enure to the benefit of the accused person. ater on, in the case of *'Muhammad Akram Vs. Abdul Waheed and 3 others'* [2], another 2-member Bench of the Supreme Court took a different view of the matter and declared that, a compromise entered into between the parties to a criminal case, at the stage of bail, is to have no value at the stage of trial, unless sanctioned by the trial Court. Finally, in the case of *'Tariq Mahmood Vs. Naseer Ahmad and others'* [3] after analyzing both the above decisions, a three member bench of the Supreme Court concurred with the latter view, in the following words:

> "….After passage of the judgment by this Court in the case of Muhammad Akram the situation had undergone a sea change and, thus, the earlier judgments rendered by different High Courts are now to be examined or scrutinized on the basis of the law declared by this Court in the said case of Muhammad Akram. We find ourselves in complete harmony with the legal position declared by this Court in the said case and hold that in all cases covered by the provisions of subsection (2) of section 345, Cr.P.C. no compromise entered into by the parties privately can have any legal sanctity or validity vis-à-vis compounding of the relevant offence unless the court before which the prosecution for the relevant offence is pending grants a formal permission accepting the compromise between the parties and in all such cases if no prosecution is pending before any court when the compromise is entered into and no permission by the trial court is granted to compound the offence any compromise privately entered into between the parties cannot be accepted as valid compounding as is declared by subsection (7) of section 345, Cr.P.C."

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1. 1998 SCMR 466
2. 2005 SCMR 1342
3. PLD 2016 SC 316

7. It is also worth noting that permission under sub-section (2) of section 345 is not granted in a mechanical manner, but the Court conducts due verification of the effected persons/legal heirs and also carefully ascertains whether the compromise has been entered under duress or free will, so also other rights of the effected persons to the compromise (including diyat or compensation) are also carefully considered by the Court. The learned Judge in the impugned Order has clearly recorded that no such application has been filed, nor the exercise under 345(2) been carried, nor all the legal heirs of the two deceased have been verified. The rights of the heirs, is yet another issue to be determined by the Court. Considering the legal position discussed *ibid*, I am of the view that a compromise (purportedly) entered into between the parties to a criminal case, while considering application for bail, is to have no value, until the same is duly accepted and recorded by the trial Court. The contention on behalf of the applicant is therefore untenable and there appears to be no infirmity in the impugned Order on this point.

8. The second ground for bail argued by the learned counsel for the applicant is that during his examination-in-chief, Muhammad Aslam son of Muhammad Ramzan (PW-1) has failed to identify the accused persons, which makes it a case of further inquiry, hence the applicant be admitted to bail. In this regard, reliance was placed on copy of examination-in-chief of PW-1, as provided by the learned counsel during course of hearing of this bail application. Learned APG objected to this on the premise that this ground was neither taken before the learned Additional Sessions Judge nor was the same even mentioned in the application before this Court, hence such ground ought to be raised before the court of first instance/ the learned Court. She further points out that there are a total of 10 witnesses to be examined in this case.

9. Perusal of the record shows that bail application was moved by the applicant before the learned Additional Sessions Judge on 01-10-2024 and the impugned order thereon was passed on 20-11-2024. The instant application was filed on 19-12-2024, whereas the date of examination-in-chief of Muhammad Aslam PW-1 is 16-01-2025 i.e. 56 days after passing of the impugned order and 27 days after filing of the instant bail application. Therefore, without touching the merits of the case, I am of the tentative view that such fact has come into existence after passing of the impugned order and even after filing of the bail application before this Court and therefore, a ground which was not taken before the court of first instance cannot be raised at the level of hearing of bail before the High Court for the first time, but the same ought to be pleaded before the Court of first instance. Same

view was taken in the case of '*Khadim Hussain and another V. The State*' [4] and '*Ijaz Ahmad V. The State*'[5].

10. Turning to the Judgments relied upon by the learned counsel for the Applicant, suffice to say the same are not applicable to the facts and circumstances of the present case. For instance, 2024 SCMR 1525 was in respect to forgery and fabrication of documents wherein there was an unexplained delay of approximately five months in lodging FIR without any sufficient explanation and there was also a status quo order in field. Apparently, such case would not be applicable to the facts of the present case. 2024 PCr.L.J 1499 was a case decided by a learned single judge of the Peshawar High Court on a compromise on some extraordinary facts. Without dilating upon the same, with all reverence and humbleness, I am unable to concur with such ratio. Even the Supreme Court Judgment which has been relied therein (1997 SCMR 1411), was with respect to a petitioner/ public servant who was convicted for 3 years under section 420 PPC and based upon compromise and admitted payment of money to the person who was defrauded, his conviction was reduced, to that already undergone. That was not even a case for grant of bail based upon some compromise and reliance on such a case is therefore completely misconceived. 1997 SCMR 1411 would also not be applicable to the present case, which is being tried under section 302 and 34 PPC. and the same is at the stage of consideration of bail. 2022 SCMR 1245 would also be inapplicable, being a case on completely different facts and circumstances wherein the complainant received bullet shot on her wrist and there was a delay in lodging FIR, whereas in the present case, there are two dead bodies and the accused have been directly nominated in the FIR and empties have also been recovered.

11. For the facts, circumstances and the legal position discussed *ibid*, I am of the view that the applicants have been directly nominated in the F.I.R. along with weapons for effective firing and for causing death of two persons, and empties have been recovered from the crime scene, which *prima facie* connects the accused person with the crime. Secondly, neither any valid or verified compromise has been permitted by the Court, nor any such application has been moved by the legal heirs, nor any exercise as contemplated under section 345 Cr.P.C. has been conducted. Who exactly are the legal heirs of the two deceased, and whether there are any minors therein and whether their rights have been duly protected, are some of which are yet to be ascertained by the concerned Court. The learned Court at

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4. 2005 YLR 1979
5. 2006 MLD 546

para 3 (page 2) of the Order has recorded that there are also four minors as legal heirs of deceased Murad Ali, as per the police report, based whereon, the learned Judge has therefore rightly observed in the impugned Order that requirements of law are yet to be fulfilled. The impugned Order is well-reasoned and in accordance with law, which does not call for any interference by this Court and in view of the above, such prayer of the applicant cannot be granted at this stage. The parties are however at liberty to approach the appropriate forum for redressal of the above, if so advised, which shall be decided on its own merits and strictly in accordance with law. Likewise for the reasons discussed earlier, the second ground *qua* the statement of PW-1, which is a fresh ground and that too, on merits of the case, is required to be agitated before the Court of first instance. The parties are therefore, also at liberty to approach the appropriate forum for their remedy on this count as well, if so advised, which shall be decided on its own merits strictly in accordance with law, without getting influenced by the observations made in this Order which are tentative in nature.

12. For the foregoing reasons, the Bail Application is dismissed.

J U D G E

Muhammad Danish