

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Crl: Bail. Appln. No. S. 739 of 2023

Applicant: Altaf Chandio V/S

The State

SINDH HIGH COURT

Composition of Bench Before Mr. Justice Muhammad Saleem Jessar

Single/ D/B

Date of: Hearing : 28/03/2024

Date of: Order : 28/03/2024

(a) Judgment approved for
Reporting

~~YES~~
NO 28/04/2024

C E R T I F I C A T E

Certified that the judgment / Order is based upon or enunciates a principle of law / decides a question of law which is of first impression / distinguishes/ over-rules/ reverses/ explains a previous decision.

Strike out whichever is not applicable.

- NOTE:** - (i) This slip is only to be used when some action is to be taken.
(ii) If the slip is used, The Reader must attach it to be the top of the first page Of the judgment.
(iii) Reader must ask the Judge writing the Judgment whether the Judgment is Approved for reporting.
(iv) Those directions which are not to be used should be deleted.

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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

2nd Cr. Bail Application No.S- 739 of 2023

Date	Order with signature of Judge
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Applicant : Through Mr. Habibullah G. Ghouri,
(Altaf Chandio) Advocate.

The State : Through Mr. Aitbar Ali Bullo,
Deputy Prosecutor General.

Complainant : Through Mr. Naseer Ahmed Wagan,
(Sikander Ali Jatoi) Advocate.

Date of hearing : 28.03.2024

Date of order : 28.03.2024

ORDER

Muhammad Saleem Jessar, J.- Applicant Altaf son of Muharam Chandio has approached this Court seeking his release on bail in Crime No.41 of 2022, registered with Police Station Dokri, for offence under Sections 302, 114, 504, 337-A(i), 337-F(i), 148, 149, PPC.

2. Facts of the prosecution case, in brief, are that on 30.7.2022, at 9.00 p.m., complainant Sikandar Ali Jatoi lodged FIR at P.S Dokri, stating therein that on 06.7.2022, in the evening time, the complainant, his nephew Nizam Ali, relatives Abdul Sattar and Toukal while going on two motorcycles to village Muhram Khan Chandio (Golimar) were intercepted near Computerized Scale on Dokri Bypass at about 8.00 p.m., by the accused persons, namely, Saeed having hatchet, Altaf having hatchet, Aijaz armed with pistol, Ali Asghar *alias* Mirch armed with pistol, Anwar having hatchet and one unidentified person armed with pistol, who by hurling abuses signaled the complainant party to stop, whereafter on the instigation of accused Aijaz Chandio, accused Saeed inflicted sharp side hatchet blow to Nizam Ali on his head, accused Anwar also inflicted him blunt side hatchet blow hitting at the fingers of his left hand, on which Nizam Ali fell down on the ground; then accused Altaf inflicted hatchet blow to PW Abdul Sattar on his head, who also fell down. On cries raised by the complainant party the accused persons fled away in their car. Complainant and PW Toukal took injured persons to Dokri PS, obtained letter for their treatment and then went to Taluka Hospital, Dokri, wherefrom injured Nizam Ali was referred to Casualty Ward of Civil Hospital, Larkana and on 30.7.2022, at 6.30 p.m. Nizam Ali succumbed to injuries during his treatment. Complainant leaving the dead body of

Nizam Ali at the Dead Body House of Taluka Hospital, Dokri, again went to Police Station Dokri and lodged FIR to the above effect. Per FIR, few days prior to the incident there was an altercation between deceased Nizam Ali and Saeed Chandio over the money transaction.

3 The case has been challaned, which is now pending before the Court of I-Additional Sessions Judge (MCTC), Larkana vide Sessions Case No.683 of 2022 re: *State v. Altaf Chandio and others*. Initially, the post arrest bail application filed by the applicant was dismissed by III-Additional Sessions Judge, Larkana vide order dated 10.10.2022 as well as by this Court vide order dated 15.12.2022 passed in 1st Cr. Bail Application No.S-562/2022. Subsequently, the complainant filed statement dated 30.08.2023 thereby withdrawing from evidence of injured PW Abdul Sattar, which was endorsed by the statement of learned DDPP for the State. Hence, on such fresh ground, the applicant again approached the trial Court/I-Additional Sessions Judge (MCTC), Larkana, seeking his release on bail, but the same has also been turned down vide order dated 01.12.2023. Hence, instant bail application has been maintained.

4. Learned counsel for the applicant submitted that the applicant is innocent and he has been falsely implicated in this case due to enmity; that there is inordinate delay of about 25 days in lodging of FIR without plausible explanation; that the role attributed to the applicant is that he caused hatchet blows to PW Abdul Sattar, which injuries were declared by the MLO as *Shajjah-i-Khafifah* falling under Section 337-A(i), PPC carrying maximum punishment of 02 years; hence is bailable. He further contended that when injured PW Abdul Sattar has been given up by the complainant as well as learned DDPP for the State, there remains nothing against the applicant except his mere presence and his case falls within the ambit of further enquiry as envisaged under sub-section (2) to Section 497, Cr.P.C. He, therefore, prayed for grant of bail to the applicant. In support of his contention, he placed reliance upon the case reported as *Mumtaz Hussain and 5 others v. The State (1996 SCMR 1125)*.

5. The learned DPG for the State candidly conceded for grant of bail to the applicant, on the ground that when injured PW Abdul Sattar has been given up by the prosecution, the case against the applicant requires further enquiry.

6. On the other hand, Mr. Naseer Ahmed Wagan, learned Counsel for the complainant, opposed the bail application and contended that complainant had withdrawn injured PW Abdul Sattar on the ground that said witness was not ready to depose against the accused persons on account of threats of murder extended to him. He further contended that the applicant is nominated in the FIR with active and specific role assigned to him. He further contended that the applicant has also shared common intention and facilitated the co-accused in the commission of offence, wherein one person namely Nizam Ali was done to death. He contended that the

offensive weapon i.e. hatchet has also been recovered from the applicant. He also contended that prior to this, such request of the applicant was not only turned down by the trial Court twice, but also by this Court, therefore, he is not entitled for concession of bail. In support of his contentions, he referred to the cases reported as *Muhammad Aslam v. The State and others* (PLD 2015 SC 41), *Shahbaz Akmal v. the State* (2023 SCMR 421), *Muhammad Usman v. The State and another* (2024 SCMR 28) and *M Taimoor Ali v. The State* (2024 SCMR 209)

7. Heard learned counsel for the parties and perused the material made available on record.

8. Per prosecution case, the role of causing fatal injuries to deceased Nizam Ali is attributed to co-accused Saeed and Anwar. So far present applicant is concerned, no doubt, he is nominated in the FIR and is alleged to have caused hatchet injury on the head of injured PW Abdul Sattar; however, the injury sustained by injured Abdul Sattar was declared by the MLO as *Shajjah-i-Khafifah* falling under Section 337-A(i), PPC, which under the law is punishable for 02 years and is bailable. It is also an admitted fact on record that complainant Sikandar Ali had filed statement dated 30.08.2023, which was endorsed by the statement of learned DDPP for the State, whereby injured PW Abdul Sattar was given up on the ground that due to issuance of threats by the accused party said witness was not ready to record his evidence. That may be the true reason or otherwise, nothing can be said at this stage; however, when the prosecution itself has withdrawn from the evidence of injured PW Abdul Sattar, to whom the applicant is alleged to have caused hatchet injury on his head, there remains nothing against the applicant except his mere presence at the time of commission of alleged offence.

9. From the above, involvement of applicant in the crime, without any corroborating material, is yet to be determined after the scrutiny of evidence that will come at the trial. No doubt, in a post arrest bail only tentative assessment is to be made and deeper appreciation or evaluation of evidence at this stage is neither desirable nor permissible, but benefit of doubt can be extended to the accused even at bail stage if the facts of the case so warrant. Reliance is placed upon the case titled as "*Resham Khan & another Vs. The State*" (2021 SCMR 2011), wherein the Hon'ble Supreme Court of Pakistan in paragraph No.8 of the judgment has held as under:-

"...The insight and astuteness of further inquiry is a question which must have some nexus with the result of the case for which a tentative assessment of the material on record is to be considered for reaching just conclusion. The case of further inquiry presupposes the tentative assessment which may create doubt with respect to the involvement of the accused in the crime. It is well settled that object of trial is to make an accused

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to face the trial and not to punish an under trial prisoner. The basic idea is to enable the accused to answer criminal prosecution against him rather than to rot him behind the bar. Every accused is innocent until his guilt is proved and benefit of doubt can be extended to the accused even at bail stage if the facts of the case so warrant. The basic philosophy of criminal jurisprudence is that the prosecution has to prove its case beyond reasonable doubt and this principle applies at all stages including pre-trial and even at the time of deciding whether accused is entitled to bail or not..."

10. In view of the above facts and on the basis of tentative assessment of the material available on record, I am of the view that applicant Altaf Chandio has made out *prima facie* case of further enquiry as contemplated under sub-section (2) to Section 497, Cr.P.C.

11. For the foregoing reasons, instant application is allowed. Resultantly, applicant Altaf Chandio is ordered to be released on bail subject to furnishing his solvent surety in the sum of Rs.300,000/- (Rupees three hundred thousand) and P.R bond in the like amount to the satisfaction of trial Court.

12. Needless to say that the observations made hereinabove are tentative in nature and the learned trial court shall not be prejudiced by any such observations and shall decide the case on merits in view of the evidence available on record.


JUDGE