

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Crl.Bail. Appln : No: S: 503 of 2023

Applicant : Khuda Bux Bijarani. V/S The State

SINDH HIGH COURT

Composition of Bench Before Mr. Justice Muhammad Saleem Jessar Single ✓

Dates of Hearing: 27/11/2023

Decided on : 27/11/2023

(a) Judgment approved for
Reporting

YES

NO

CERTIFICATE

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.

61

ORDER SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO
Crl. Bail Appln. No.S-503 of 2023.

Date _____ Order with signature of Judge _____

1. For orders on office objection 'A'.
2. For hearing of bail application.

27.11.2023

Mr. Shahbaz Ali M. Brohi, advocate for the applicant.

Mr. Aitbar Ali Bullo, D. P.G.

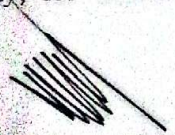
ORDER.

MUHAMMAD SALEEM JESSAR, J.- Through this application, applicant Khuda Bux son of Rehmatullah Bijarani, seeks his release on bail in Crime No.47/2015, registered with Police Station Napar Kot, (District Shikarpur), under Sections 302, 324, 364, 337-H(ii), 148, 149, 379, PPC.

2. Process issued against complainant returned by ASI Gul Sher Jatoti of PS Napar Kot, un-served taken on record. Per process server the complainant party has flatly refused to appear before this Court as they are absconders and are facing murderous enmity with different people.

3. The case had already been challaned by the police in the year 2015 which is now pending for trial before the Court of Ist Additional Sessions Judge, Shikarpur, vide Sessions Case No.819/2015 Re-State v. Noorddin and others. Since from very inception none was arrested by the police, therefore, challan was submitted in the Court of law in absentia as required by Section 512, Cr.P.C. The applicant has been shown arrested by the police after eight years of the incident, therefore, he filed post arrest bail application before the trial Court which after hearing the parties has been declined by the trial Court vide its order dated 08.03.2023. Hence this application.

4. As per prosecution case, the applicant/accused along with co-accused, duly armed with K.Ks in furtherance of their common object, had committed *Qatl-i-Amd* of deceased Ghulam Muhammad, by causing fire shot injuries to him, so also caused fire shot injuries to P.W Muhammad Nawaz and made aerial firing as well as committed theft of 20 buffaloes of complainant party, for which they were booked and cahllaned in instant case.



5. Learned counsel for the applicant submits that the applicant has been implicated falsely by the complainant party on account of long standing enmity which has been admitted by the complainant in his FIR; learned counsel further contends that specific role of causing firearm injuries to deceased Ghulam Muhammad and injured Muhammad Nawaz, is assigned to co-accused Nooruddin, Karamuddin, Zainullah, Saadullah and Allah Rakhio. As far as role of present applicant Khuda Bux is concerned, per FIR mere presence has been shown coupled with aerial firing and no any overt act has been assigned to present applicant. He further contends that though there is noticeable absconson on the part of the applicant but it is not sufficient to withhold the concession of bail solely on this ground when no overt act has been assigned to him. Therefore, submits that mere his absconson without assigning any specific role makes the case against him to be of further enquiry. In support of his contention, he places reliance upon the case of *Mitho Pitafi v. The State* (2009 SCMR 299). He lastly submits that the case against the applicant requires further enquiry, therefore, he may be granted bail.

6. On the other hand, learned D. P.G., appearing for the State, opposes the bail application, on the grounds that the applicant is not only nominated in the FIR; besides had remained fugitive from law for a long time, therefore, according to him a fugitive from law always loses some of his normal rights hence is not entitled for bail.

7. Heard learned counsel for the applicant, learned D. P.G. and have gone through the available material with their able assistance.

8. No doubt in this incident one person, namely, Ghulam Muhammad, had lost his life and one person, namely, Muhammad Nawaz, had sustained injuries at the hands of accused persons. Perusal of the FIR shows the present applicant Khuda Bux was armed with K.K but no overt act has been assigned against him and mere presence has been shown by the complainant at the scene of incident. As far as contention advanced by the learned D.P.G that the applicant had remained fugitive from law for about 08 years is concerned, in this regard it is worth to mention here that if accused has good case for bail on merits then mere his absconson would not intercept the way while granting bail.

9. Since the complainant party as reported by the process server has become fugitive from the law and due to their non

66
appearance before the trial Court the case was kept in abeyance, therefore, early commencement of the trial is not within sight. Under the scheme of Criminal Procedure Code, 1898, no one should be kept behind the bars for indefinite period without progress in his trial as it is vested right of the accused to have expeditious trial. Therefore, in case of refusal the trial would not be commenced, consequently the applicant will be languishing in jail without progress in his trial, which is not the requirement of the law.

10. It is well-settled principle of law that every accused would be presumed to be blue-eyed boy of law until and unless he may be found guilty of alleged charge and law cannot be stretched upon in favour of the prosecution, particularly at bail stage. In the circumstances, the case against the applicant is of further enquiry as contemplated under sub-section (2) of Section 497, Cr.P.C. Consequently, instant bail application is hereby allowed. The applicant shall be released on bail subject to his furnishing solvent surety in the sum of Rs.200,000/- (Rupees two hundred thousand only) and P.R bond in the like amount to the satisfaction of learned trial Court.

11. Needless to mention here that the observations made herein-above are tentative in nature, which shall not prejudice the case of either party at trial.

~~Judge~~

66

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Judge

M.Y. Panhwar/ **