

ORDER SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO
1st Crl. Bail Appln. No.S-767 of 2023

Date	Order with signature of Judge
22.02.2024.	<ol style="list-style-type: none">1. For orders on office objection 'A'.2. For hearing of bail application.

Mr. Athar Abbas Solangi, Advocate along with Applicant
(on bail).

Mr. Ali Anwar Kandhro, Addl P.G

ORDER

MUHAMAD SALEEM JESSAR, J.- Through instant bail application, applicant Syed Muhammad Shah son of Syed Muhammad Razi Shah, seeks his admission on pre-arrest bail in Crime No.07 of 2023 registered with Police Station Bhand Marri, District Dadu, for offence punishable under Sections 302, 324, 147, 148, 149, PPC.

2. The applicant preferred his pre-arrest bail Application No.1780 of 2023 before the Court of IInd Additional Sessions Judge, Mehar, which was dismissed through his order dated.03.10.2023; hence, this application.

3. Brief facts as contained in the FIR are that the complainant ASI Ali Asghar Lakhair was on his duty at PS on 08.06.2023, where one Saddam Hussain Bhurt brought an injured person, namely, Saeed Bhurt and informed that he(Saeed) has been injured by the persons of Bhurt community and letter for treatment was given to him by said ASI. Later on, one Saleem Bhurt from his cell number informed the ASI that his brother Fareed has been murdered by the persons of Bhurt community by causing firearm injuries and asked the ASI to come to the spot and conduct necessary proceedings. ASI kept such entry in Daily Diary and went to the place of incident. Later he got conducted the autopsy of the body and handed it over to his legal heirs. The

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complainant/ ASI also came to know that one Yameen Bhurt has been injured in the incident. The ASI asked legal heirs of the deceased and also contacted said Saleem by issuing notice to them to come forward and lodge the FIR, but they did not come. Thus, the ASI himself lodged such FIR on behalf of the State on 22.06.2023, at about 2000 hours, to the effect that he has come to know that the accused persons, namely, Abdul Kareem, Mansoor, Wakeel, Mumtaz, Muharam, Manthar, Ghumthar, Niaz @ Dilber, Basheer, Lakhmir, Rashid, in furtherance of their common object, have committed murder of deceased Fareed Bhurt and caused injuries to Saeed and Yameen.

4. Subsequently one Saleem Bhurt filed Crl. Misc. Application before learned Additional Sessions Judge-I, Dadu, for registration of the FIR with regard to alleged murder of his brother Fareed and causing injuries to one Saeed Ahmed, which was dismissed vide order dated 21.06.2023. Against that order, Saleem Bhurt approached to this Court by filing Crl. Misc. Application bearing No.S-209 of 2023, which was disposed of vide order dated 18.07.2023, with the consent of both parties that investigation of aforesaid FIR may be entrusted to Inspector DSP Siraj Ahmed Lashari, who was posted in Hyderabad Range, for further investigation.

5. After the above orders passed by this Court in Crl. Misc. Application, Inspector/DSP Siraj Ahmed Lashari, started investigation of aforesaid crime, who after thorough investigation let-off the applicant under section 169, Cr.P.C and filed his report under section 168, Cr.P.C, on the basis of which SHO concerned was directed by SSP Dadu to submit report under section 173, Cr.P.C before the concerned Magistrate, but learned Magistrate disagreeing with the report submitted by the SHO joined the applicant.

6. Learned counsel for the applicant submits that name of the applicant does not find place in the F.I.R; that under the orders of this Court

passed in Crl. Misc. Appln. No.S-209/2023 re-Saleem Bhurt v. I.G. Sindh and others, investigation of aforesaid crime was entrusted to Inspector DSP Siraj Ahmed Lashari, who conducted investigation and let-off the applicant from the commission of crime under section 169, Cr.P.C. Learned counsel further submits that when the matter was fixed before learned IIInd Additional Sessions Judge, Mehar for confirmation of ad-interim pre-arrest bail, where the counsel for the complainant had straightaway raised his no objection for grant of bail to the applicant, but even then the learned IIInd Additional Sessions Judge recalled the interim order and dismissed bail application. Learned counsel further adds that the only piece of evidence against the applicant was the statement of PW Saleem Bhurt recorded under section 161, Cr.P.C, who had also raised his no objection before the trial Court for grant of bail. Learned counsel further adds that the applicant is a person of advanced age of 73 years and at present he is an elected Chairman of Zila Council Dadu; besides, belongs to a Nobel family. In support of his contentions, learned counsel has placed his reliance upon the cases of *SANAULLAH and another v. THE STATE (2019 YLR Note 64)*, *SAJID HUSSAIN alias JOJI v. The STATE and another (PLD 2021 Supreme Court 898)*, *SHARIF KHAN v. The STATE and another (2021 SCMR 87)*, *SAAD ZIA v. The STATE and others (2023 SCMR 1898)* and *SAEED GUL and another v. The STATE (2023 P.Cr.L.J 823)*. In such circumstances, learned counsel prays for confirmation of ad-interim pre-arrest bail.

7. Learned Addl. P. G, appearing for the State, does not oppose the bail application, on the ground that since the name of the applicant does not transpire in the FIR and further investigation of aforesaid crime was entrusted under the orders of this Court to Inspector/DSP Siraj Ahmed Lashari, who

conducted the investigation and due to deficient evidence I.O/DSP had let-off the applicant under section 169, Cr.P.C.

8. Process issued against legal heirs of the deceased has been returned un-served by SIP Mukhtiar Ali of Police Station Bhand Marri, taken on record. Process server states that PW Saleem Bhurt, against whom process was issued, is an absconder in some other crime of same Police Station, therefore, he is not traceable.

9. Undisputedly, the name of applicant does not find place in the F.I.R; however, he was subsequently involved by one Saleem Bhurt, brother of the deceased Fareed, through his statement under section 161, Cr.P.C recorded on 12.07.2023, though the incident had occurred on 08.06.2023 and the FIR of the incident was lodged on 22.06.2023. If the period for recording of 161, Cr.P.C statement is calculated, it has been recorded with the delay of 20 days from the registration of FIR and the FIR itself shows, it was lodged with the delay of about 14 days from the date of incident. It is settled law that further/supplementary statement cannot be equated with the status of the F.I.R and it is nothing but to support the prosecution case only to strengthen its rope. Reliance can be had on the case of *MUHAMMAD RAFIQUE and others v. THE STATE (2010 SCMR 385)*. The operative part of the Judgment is reproduced as under :

"25. As regards supplementary statement, P.W.17 took names of 10 more accused persons from the names he took in the F.I.R., the same can be treated as statement under section 161, Cr.P.C, that can only be used by the accused to contradict the witness. It cannot be used by the prosecution for any purpose. This improvement clearly shows that supplementary statement was made after due consultation and deliberation to falsely involve the accused. This point was examined by this Court in the case of "Falak Sher v. State 1995 SCMR 1350", wherein it has been observed that, "any statement or further statement of the first informant recorded during the investigation by police would neither be equated with First Information Report nor read as part of it and the involvement of additional accused in such statement was fake improvement which made the basis for other eyewitnesses as well for false implication". The said rule was reiterated in subsequent decision

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of this Court in the case of Khalid Javed v. The State (2003 SCMR 1419) and further observed that such witness would be unreliable."

10. It is indicative of the fact that the applicant was let-off by I.O of the case under section 169, Cr.P.C owing to the deficient evidence and such report in terms of Section 173, Cr.P.C was filed by the police before the Court having jurisdiction, but the Magistrate concerned issued notice to the applicant through his order dated 09.12.2023, which was assailed before this Court and subsequently it was set aside with direction to the Magistrate to pass fresh order after providing equal opportunity of hearing to all concerned; however, as stated at the Bar, still the Magistrate has not pronounced verdict. Record shows that PW Saleem Bhurt, brother of deceased Fareed, in his 161, Cr.P.C statement has nominated the applicant with active role; however, at the time of hearing of bail application before the Court below, his counsel had extended no objection in favour of the applicant for confirmation of interim pre-arrest bail. The case-laws relied upon by the learned counsel for the applicant are very much applicable to the case in hand.

11. In the circumstances and in view of deficient evidence as well as subsequent release of applicant by the Investigating Officer under section 169, Cr.P.C, the case of applicant has become one of further enquiry within the meaning of sub-section (2) of Section 497, Cr.P.C. Consequently, instant bail application is hereby allowed. Resultantly, interim pre-arrest bail granted to the applicant on 29.12.2023 is hereby confirmed on the same terms and conditions.

Judge