

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Amin-ud-Din Khan
Mr. Justice Naeem Akhtar Afghan

Criminal Petitions No.157 of 2024 and CrI. P. No. 894 of 2024
(On appeal against the order dated 12.02.2024 of the High Court of Sindh Bench at Sukkur passed in CrI. B. a. No. S-544 of 2023)

<i>Saeed Ahmed</i>	(CrI. P. No. 157 of 2024)	
<i>Noor Muhammad</i>	(CrI. P. No. 894 of 2024)	<i>Petitioners</i>

Versus

<i>The State</i>	
<i>(In both petitions)</i>	<i>Respondents</i>

For the petitioner:	Mr. Razzaq A. Mirza, ASC
<i>(CrI. P. No. 157 of 2024)</i>	Ms. Bushra Qamar, ASC
	A/w. petitioner
For the complainant:	Mr. Abdul Rasheed Kalwar, ASC
<i>(In both petitions)</i>	A/w. complainant

For the petitioner:	Mr. Razzaq A. Mirza, ASC
<i>(CrI. P. No. 894 of 2024):</i>	
For the State:	Mr. Siraj Ali Khan Chandio, Addl.P.G., Sindh
<i>(In both petitions)</i>	<i>(Via video link from Karachi)</i>
Date of hearing:	23.08.2024

J U D G M E N T

NAEEM AKHTAR AFGHAN, J. Both the petitioners have surrendered before this Court for grant of pre-arrest bail under sections 302, 324, 337-H(ii), 337-F(v), 114, 148 and 149 PPC in FIR No.31/22 police station Jarwar, District Ghotki. The petitioner *Saeed Ahmed* was granted ad-interim pre-arrest bail by this Court *vide* order dated 5 July 2024 while the petitioner *Noor Muhammad* has been granted ad-interim pre-arrest bail by this Court *vide* order dated 9 August 2024.

2. As per contents of FIR No.31/22 lodged by Ashiq Ali s/o Mir Hassan by caste Laghari (**the complainant**) with police station Jarwar, District Ghotki on 17 July 2022, in the year 2020 one *Nabi Bux Buzdar* died due to drowning in *Kundair Shakh (minor)* in respect whereof the tribesmen of Buzdar got registered FIR No.51/20 under sections 201 and 302 PPC against unknown accused. Subsequently, on the basis of false allegations with regard to the above occurrence, he was kidnapped by the tribesmen of Buzdar and in this regard FIR No.66/21 was registered with police

station *Mirpur Mathelo* under section 364 PPC against accused *Rub Bux Buzdar* and others. As a counterblast, the accused *Rub Bux Buzdar* got registered false cases against *Gul Hassan Laghari* and others and different trials are pending between the parties before the Courts of Criminal Jurisdiction. On 2 July 2022 accused *Rub Nawaz Buzdar* and others attacked upon their houses and injured the cousin of the complainant namely *Mst. Sumera* due to which FIR No.46/22 was registered against accused *Rub Nawaz Buzdar* and others. On 16 July 2022 trial proceedings of FIR No.51/20 Police Station Jarwar under sections 201 and 302 PPC were fixed before the Court of Additional Sessions Judge-I Ghotki and *Munir Ahmed s/o Wali Muhammad Laghari*, *Gul Hasan s/o Ali Sher Laghari* and *Rajab s/o Nihal Laghari* attended the hearing and they were accompanied by the complainant. The matter was adjourned for 9 August 2022. After attending the hearing when he alongwith *Munir Ahmed* on one motorcycle and *Gul Hassan* and *Rajab Laghari* on another motorcycle reached near village *Alhore Dhaio Malik*, a green colour GLI car and one black colour motorcycle intercepted. Accused *Rab Bux* and *Shabbir* sons of *Hakim Khan Buzdar*, accused *Saeed Khan*, *Noor Muhammad* and *Munir Ahmed* sons of *Bungal Khan Buzdar* got down from the car with Kalashnikovs in their hands, accused *Hakim Khan* (empty handed) and accused *Maher Khan* (armed with pistol) got down from the motorcycle. Due to fear of firearms when *Gul Hasan* and *Rahib* started running leaving the motorcycle, accused *Hakim Khan* made *lakara* to kill them and not to spare them alive upon which accused *Rab Bux* made straight firing with Kalashnikov upon *Gul Hasan* due to which he received firearm injuries on his forehead and back. Accused *Shabbir* made straight firing with Kalashnikov on the back of *Gul Hasan* while accused *Saeed Khan* also made firing with his Kalashnikov due to which *Gul Hasan* received firearm injuries on his right side. Accused *Noor Muhammad* made straight firing upon *Rahib* due to which he received firearm injury on the upper part of his left leg. For creating harassment, while making aerial firing, all the accused fled in the car and motorcycle. The injured *Gul Hassan* succumbed to the injuries on the spot while injured *Rahib* was lying unconscious due to firearm injuries. The injured and deceased were taken to Civil Hospital/DHQ *Mirpur Mathelo*. The injured was referred to *Rahim Yar Khan* for further treatment.

3. After hearing learned counsel for the petitioners, learned counsel for the complainant and learned Additional Prosecutor General, Sindh at length, we have perused the available record. It transpires that during

investigation both the petitioners had taken plea of *alibi* with the contention that on the date and time of the alleged occurrence, they both were visiting *Agha Khan Hospital, Karachi* and had also drawn cash from HBL, ATM booth installed within the *Agha Khan Hospital* at the date and time of the occurrence. Apart from recording statements of the witnesses during investigation, Call Data Record (**CDR**) of petitioner *Saeed Khan* was also availed showing the presence of the petitioner *Saeed Khan* in Karachi at the date and time of the occurrence. The investigating officer also collected and verified the laboratory slips of the *Agha Khan Hospital, Karachi* showing presence of both the petitioners in *Agha Khan Hospital, Karachi* on the date and time of the alleged occurrence. The investigating officer also collected CCTV footages of 16 July 2022 (18:34 hours) of HBL, ATM booth *Agha Khan Hospital, Karachi* wherein both the petitioners were seen present.

4. In view of all the above material, both the petitioners were placed in Column No. 2 of the *Challan* and in this regard report under section 173 Cr.P.C. was submitted by the investigating officer before the Court of Judicial Magistrate, *Mirpur Mathelo* who, *vide* order dated 3 October 2022, endorsed the said report with the observations that both the petitioners can be joined in the trial proceedings if sufficient/credible evidence comes on record against them

5. The above order dated 3 October 2022 passed by Judicial Magistrate, *Mirpur Mathelo* in favour of petitioners was challenged by the complainant in High Court of Sindh Bench at Sukkur by filing Criminal Miscellaneous Application No.S-535 of 2022 which was accepted *vide* order dated 24 July 2023 and the matter was remanded to the Judicial Magistrate, *Mirpur Mathelo* with directions to pass a fresh and speaking order within fifteen days after providing opportunity of hearing to all the parties and considering all the available material/ the material placed before him.

6. After hearing all the concerned, *vide* order dated 12 August 2023, while disagreeing with the opinion of the investigating officer, the Judicial Magistrate, *Mirpur Mathelo* took cognizance of the matter against all the nominated accused including the petitioners and forwarded the interim as well as final *challan* alongwith all the nominated accused including the petitioners for trial before Sessions Court, *Ghotki*.

We have been informed that the trial proceedings have commenced and charge has been read over to all the nominated accused including the petitioners.

7. Apprehending their arrest by the police at the behest of the complainant for causing humiliation and unjustified harassment, the petitioners approached the trial court for grant of pre-arrest bail but the same was declined. The petitioners approached the High Court of Sindh Bench at Sukkur for pre-arrest bail but their applications have been dismissed *vide* separate orders dated 12 February 2024.

8. The investigating officer was summoned by this Court. On 26 July 2024 ASI *Amanullah* (investigating officer) appeared before this Court with the statement that he has investigated both the petitioners; on completion of investigation both the petitioners were found innocent by the police due to lack of incriminating evidence and they both have been placed in Column No.2 of the *Challan*; both the petitioners are no more required for any further investigation or probe as the trial has already commenced.

9. In view of all the above, the apprehension of the petitioners about their arrest by the police at the behest of the complainant with ulterior motives to create humiliation and unjustified harassment cannot be held vague or baseless. The investigation has already been completed. No recovery of firearms has been affected from the petitioners. Admittedly, the petitioners facing trial are no more required for any further investigation or probe. The guilt or innocence of the petitioners is yet to be determined at the trial after recording evidence. According to settled principles of law bail cannot be withheld as mere punishment.

10. On the basis of tentative assessment of the material so far available on record, the case against the petitioners falls within the ambit of further inquiry as well. In the cases of **"Salman Mushtaq v The State"**¹, **"Ahtisham Ali v The State"**², **"Fahad Hussain v The State"**³, **"Gulshan Ali Solangi v. The State"**⁴, **"Muhammad Sadiq v. The State"**⁵ and **"Rana Muhammad Arshad v. Muhammad Rafique"**⁶ apart from the grounds of malafide, ulterior motives and abuse of process of law, the accused were granted pre-arrest bail on the ground of further inquiry on the basis of tentative assessment of the material available on record.

¹ 2024 SCMR 14

² 2023 SCMR 975

³ 2023 SCMR 364

⁴ 2020 SCMR 249

⁵ 2015 SCMR 1394

⁶ PLD 2009 SC 427

11. The above are the reasons of our short order of even date whereby while granting leave to appeal, both the petitions were converted into appeals. The same were accepted and the ad-interim pre-arrest bail granted to both the petitioners *vide* orders dated 5 July 2024 and 9 August 2024 have been confirmed.

The observations made herein above are tentative in nature and same shall not influence merits of the case at the trial.

Judge

Judge

Islamabad
23.08.2024
Atif* /
NOT APPROVED FOR REPORTING