

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench

Mr. Justice Jamal Khan Mandokhail
Mr. Justice Syed Hasan Azhar Rizvi
Ms. Justice Musarrat Hilali

Criminal Petition No. 46/2024

*(Against the judgment dated 19.12.2023 of
the Lahore High Court, Lahore passed in
Crl. Misc. No. 74603-B/2023)*

Nacem Sajid s/o Muhammad Khalid and others **Petitioners**

Versus

The State thr. Prosecutor General Punjab and **Respondents**
another

For the Petitioners: Mr. Mazhar Iqbal Sidhu, ASC
Syed Rifaqat Hussain Shah, AOR

For the State: Mirza Abid Majeed, DPG Punjab
Tariq, SI/IO


For the Complainant: Mr. Akhtar Hussain Bhatti, ASC

Date of Hearing: 17.05.2024

ORDER

Jamal Khan Mandokhail, J.- For the reasons to be recorded later, by majority of 2 to 1 (Syed Hasan Azhar Rizvi, J, dissenting), this petition is converted into an appeal and is allowed. The petitioners are granted post-arrest bail subject to their furnishing surety bonds in the sum of Rs. 2,00,000/- each and PR in the like amount each to the satisfaction of the Trial Court. The Trial Court should proceed with the matter expeditiously and to decide the matter preferably within the period as directed by the High Court.

sd/-
sd/-
sd/-


Islamabad
17th May 2024
Rizwan
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DJ/MR.

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ORDER

Jamal Khan Mandokhail, J.- The petitioners were arrested in pursuant to FIR No. 663/2023 dated 25.05.2023 registered under sections 302, 148 & 149, PPC at Police Station Hujra Shah Muqem, District Okara. The petitioners filed an application for grant of bail before the Trial Court, which was dismissed. Feeling aggrieved, they approached the Lahore High Court, Lahore ('the **High Court**'), but their application was dismissed by means of the impugned judgment, hence this petition.

2. The learned counsel for the petitioners states that the petitioners are owners of the property, where the incident occurred. They were busy in ploughing their land through tractors, but all of sudden, the complainant and his companions came at the place of occurrence and started interference. The learned counsel submits that the complainant party attacked upon the accused and others and blazed three tractors of the petitioners' party. It is stated that in respect of the said incident, a cross FIR was also registered by the petitioners. The learned counsel adds that there is a civil dispute between the parties, on the basis whereof, the petitioners have falsely been implicated in the case.

3. The learned Deputy Prosecutor General and the learned counsel for the complainant opposed the contentions and stated that the petitioners are nominated in the FIR and are responsible for the commission of the act of committing murder.

4. Arguments heard and have perused the record. It is a fact that issue between the parties is in respect of the land where the incident had occurred. The claim of the complainant is that the petitioners and others attacked upon the father of the complainant with sticks who was injured and subsequently he was thrown in front of the tractor and the tractor ran over their father, which resulted into his death. On the other hand, the petitioners denied the claim of the complainant and have narrated a different story. According to them, the complainant was the aggressor who attacked upon them. Role of each of the accused has to be established subsequently, in the light of medical report showing cause of death. The facts and circumstances lead us to a conclusion that the case of the prosecution requires to be proved through a cogent and reliable evidence, which is yet to be produced before the Trial Court. At this stage, on a tentative assessment, *prima facie*, the petitioners cannot be singled out for commission of the offence. Their involvement in the case is one of a further inquiry, on the basis of which, the petitioners are entitled for the grant of bail. These are the reasons of our short order of even date, which is as follows:

'For the reasons to be recorded later, by majority of 2 to 1 (Syed Hasan Azhar Riziv, J, dissenting), this petition is converted into an appeal and is allowed. The petitioners are granted post-arrest bail subject to their furnishing surety bonds in the sum of Rs. 2,00,000/- each and PR in the like amount each to the satisfaction of the Trial Court. The Trial Court should proceed with the matter expeditiously and to decide the matter preferably within the period as directed by the High Court.'

I appended my dissenting reasons

Islamabad,
17th May 2024
Rizwan

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JUDGMENT

Syed Hasan Azhar Rizvi:- I have had the privilege of going through the order ("**majority decision**") authored by my learned Colleague Mr. Jamal Khan Mandokhail, J. With great respect, I do not find myself in agreement to it for the facts and reasons mentioned herein.

2. Through the present petition, the petitioners are seeking post-arrest bail in case FIR No.663/2023 dated 25.05.2023 registered under Section 302,148 & 149 PPC at Police Station Hujra Shah Muqeem, District Okara.

3. Allegations leveled against the petitioners are that on 25.05.2024 at about 05:45 P.M came armed at the fields of the deceased with three tractors. They thrashed the deceased (complainant's father) with clubs and threw him in front of the tractor thus caused his death.

4. Perusal of the record indicates that all the petitioners are expressly nominated in the FIR with specific roles attributed to them. They collectively caused injuries to the deceased Attique-ur-Rehman and threw him in front of the tractor. The petitioners have not disputed the time, date, and place of occurrence or their presence at the time of occurrence has been denied.

5. This court in the case of Bakhti Rahman,¹ ruled as under:

"At the bail stage, the Court has to tentatively form an opinion by assessing the evidence available on record without going into merits of the case. The deeper appreciation of the evidence cannot be gone into and it is only to be seen whether the accused is prima facie connected with the commission of offence or not. In order to ascertain whether reasonable grounds exist or not the Courts not only have to look at the material placed before them by the prosecution, but see whether some tangible evidence is available against the accused or not to infer guilt."

¹ (2023 SCMR 1068)

6. As far as contention of the learned counsel regarding rule of consistency is concerned, it is trite law that the rule of consistency is applicable only when one person's case is at par with the rest of the accused whose post-arrest bail has been granted. This is not the case at hand and petitioners have played an active role in causing the death of the deceased.

7. The rule of consistency was explained by this court in the case of Muhammad Atif,² in the following words:

"The rule of consistency in bail matters is attracted and applied after the grant of bail to a co-accused. Grant of bail by a court considers several factors like the contents of the FIR, the incriminating material collected by the police during investigation, the past history of the accused, etc. The grounds which form the basis for the grant of bail to a co-accused is thus the benchmark for grant of bail to the accused under the rule of consistency. Therefore, the court has to assess whether the role of the accused in the FIR, examined in the background of the material collected by the Police is the same as that of the co-accused, who has been granted bail. It is this congruence in the case of the co-accused and the accused that attracts the rule of consistency."

Therefore, in view of the above judgment, the rule of consistency is not attracted in the case at hand.

8. The MLC available on record fully supports the prosecution case. There is no contradiction between the medical report and the version put forth by the complainant.

9. The majority judgment granted bail on the ground of cross-version. However, that cross-version was registered after the delay of one month and 03 days. Firstly, Petitioners filed the first post-arrest bail before the trial court on 27.05.2023 and they never mentioned about the alleged occurrence as mentioned in cross-version.

10. The offence of Qatl-i-Amd alleged in the present case, being punishable with death or imprisonment for life under Section 302, PPC, falls within the prohibitory clause of Section 497(1),

² (2024 SCMR 1071)

CrPC. In the offences that fall within the prohibitory clause of Section 497(1), CrPC, the post-arrest bail is granted on three grounds: (i) under the first proviso to Section 497(1), CrPC, on the ground of the accused being a minor, or a woman, or a sick or infirm person; (ii) under the third proviso to Section 497(1), CrPC, on the ground of delay in the conclusion of the trial beyond the period prescribed for no fault of the accused; and (iii) under Section 497(2), CrPC, on the ground of further inquiry into the guilt of the accused. The present case, by tentative assessment, does not seem to be one of the further inquiry. This Court has refused to grant the bail in similar circumstances as in the case Bakhti Rehman v. State (2023 SCMR 1068) and Muhammad Atif v. State (2024 SCMR 1071).

8. In view of above facts and circumstances, petitioners have failed to make out a case for the grant of bail. Impugned judgment of the High Court is well-reasoned, has considered all the factual and legal aspects, thus, needs no interference.

9. Consequently, this petition is hereby dismissed and leave refused.



(Syed Hasan Azhar Rizvi)

JUDGE

Islamabad
~~NOT APPROVED FOR REPORTING~~
Paras Zafar, LC/-