

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Cr. Bail Application No. S – 792 of 2020**

Date	Order with signature of Judge
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**For hearing of bail application**

(Notice issued)

**25.01.2021**

Mr. Qudratullah Rajput Advocate for the Applicant/accused  
Mr. Shafi Muhammad Mahar, DPG for the State a/w  
complainant Gulshad Ahmed Narejo

**ORDER**

**Aftab Ahmed Gorar, J-** Through instant Criminal Bail Application, the applicants/accused Taj Muhammad S/o Muhammad Soomar and Azam S/o Taj Muhammad, seek post-arrest bail in Crime No.83/2020 registered at Police Station, Setharja, for offences punishable under Sections 302, 120-B, 436, 337-H(2), 427, 429, 148, 149PPC.

2. The facts of the prosecution case, in brief are that on 13.10.2020 complainant Gulshad Narejo lodged the FIR bearing Crime No.83/2020 at police Station, Setharja, stating therein that he has given his piece of land to his uncle Taj Muhammad Narejo for cultivation, whereas, his brother Imran Ali was got married with Mst. Nusrat daughter of Gul Hassan (his uncle) but due to matrimonial affairs, there was some annoyance in between them and his uncles, hence they in collusion with each other occupied his aforesaid land and were issuing threats. It is stated that the brother of complainant namely Imran Ali contracted Court marriage with Mst. Sidratul Muntaha D/o Niaz Hussain Bhutto, which has also annoyed Gulzar Narejo, as he also wanted to marry the said girl, therefore, the uncles of complainant namely Taj Muhammad, Gul Hassan and said Gulzar were in league with them and used to threaten the complainant

party. It is further alleged that on 12.10.2020, he (complainant) along with his father Dur Muhammad, brothers Imran Ali and Mobeen Ali, mother Mst.Ameerzadi, sister Miss. Munawar and sister-in-law Sidratul Muntaha, were sleeping their house, it was 11:30 pm there was dog barking, they woke-up and saw that 11 persons duly armed with weapons were standing in their house, the accused persons overpowered them, out of them nine accused were identified namely each one Gulzar with Kalashnikov, Nadir with Pistol, Abid with country made pistol, Taj Muhammad with repeater, Gul Hassan with Gun, Ghulam Fareed with Pistol, Azam with Repeater, Jamal with Pistol and Imtiaz with Kalashnikov, and two unknown accused having pistols, they will be identified, if seen again. Out of them, accused Gulzar gave hakal to them (complainant party), whereas, accused Nadir fired direct pistol shot upon Imran Ali and accused Abid also fired direct pistol shot upon Imran Ali, which hit Imran Ali, who raised cries and collapsed on the ground; accused Gul Hassan fired direct gunshot upon Mobeen and accused Ghulam Fareed made direct pistol shot upon him, which hit him; accused Jamal fired direct pistol shot upon Dur Muhammad, which hit him. Thereafter the complainant party entreated the accused persons in the name of Almighty Allah and Holy Messenger and raised cries, upon which the villagers were coming. It is alleged that in the meanwhile, accused Gulzar and Imtiaz took match boxes and set the cattle shed on fire, as consequences thereof 05 Goats, roof of the house, beds, gold ornaments and cash was also burnt. Thereafter, all the accused persons escaped away and they saw that Dur Muhammad and Mobeen Ali were died, whereas, Imran Ali was crying who was shifted to hospital, who also succumbed to the injuries. Then the complainant went to Police Station and lodged the FIR as stated above.

3. The applicants on having been refused post-arrest bail by the Court of learned Additional Sessions Judge, Mirwah vide order dated 01.12.2020 hence they have preferred the instant bail application.

4. It is contended by learned counsel for the applicants/accused that the applicants/accused are innocent and have falsely been implicated in this case due to enmity over the landed property as well as matrimonial dispute; that there is inordinate and unexplained delay of 24 hours in lodgment of the FIR for which no plausible explanation has been furnished by the complainant; that the role attributed to the present applicants/accused that they were armed with Repeaters but they did not use the same nor have played any active role in the commission of the offence; that the alleged incident has taken place in the odd hours of the night and in such scaring situation how it is possible that the complainant identified 09 persons along with their weapons; that all the P.Ws are related, inter se, hence they are setup, hence their version cannot be believed as trustworthy and confidence inspiring; that the applicants/accused are in jail since their arrest, case has been challaned, no fruitful result will be achieved to keep the applicants/accused in jail for indefinite period, therefore, he prayed for grant of bail to the applicants/accused.

5. Learned DPG for the State along with complainant has opposed for grant of bail to the applicants/accused by contending that the applicants are nominated in the FIR with role that they were armed with repeaters and facilitated the co-accused in the commission of the offence; that three innocent persons have been done to death in the incident; therefore, the applicants/accused are vicariously liable, hence do not deserve for concession of bail.

6. I have heard the learned counsel for the parties and perused the record. As per FIR, the allegation against the present applicants/accused Taj Muhammad and Azam is that they were armed with Repeaters and present at the place of incident and they have not played any active role in the commission of the offence, and they are not alleged to have caused any injury either to any of the deceased or the complainant party. The alleged incident has taken place in the odd hours of the night and identity on the light of bulb is a weak piece of evidence, hence at the most case falls under the scope of vicarious liability, which is to be determined by the trial Court after recording evidence. I am fortified by the case of ***Tariq Zia vs. The State reported as (2003 SCMR 958)***, wherein the Hon'ble Supreme Court of Pakistan on the identical and similar circumstances has been pleased to grant bail to the accused having been attributed the role of raising *lalkara* being empty handed and had not played any active role in the commission of the offence. In these circumstances the case against applicants/accused calls for further enquiry in terms of Sub-section (2) of Section 497 Cr.P.C. Accordingly, the instant bail application is allowed and applicants/accused are admitted to post-arrest bail subject to furnishing solvent surety in the sum of ***Rs.300000/- (Three lac)*** each and PR bond in the like amount to the satisfaction of learned trial Court.

7. The observations made herein above are tentative in nature and will not prejudice the case of either party at trial.

Judge