

ORDER SHEET

THE HIGH COURT OF SINDH BENCH AT SUKKUR

CRL.BAIL APPLN.NO.D-697 OF 2012

For hearing

Applicant : Abdul Majeed Mahar, through M/s Ali Gul Abbassi and Abdul Naeem Pirzada advocates

Respondent : The State, through Mr.Sardar Ali Shah Rizvi APG

Date of hearing : 11.10.2012

Date of Decision : 11.10.2012

ORDER

AHMED ALI M. SHAIKH---J., Through this application, applicant Abdul Majeed, who has been sent up to face the charge ~~under~~ under Section 302, 148 & 149 PPC read with Section 7 of Anti Terrorism Act 1997, seeks post arrest bail in Crime No. 24 of 2012 of Police Station Baijee Shareif, District Ghotki.

2. Facts giving rise to this application are that on 18.06.2012 at about 1515 hours, first informant Sanaullah Chachar lodged report, stating therein that on same day at about 1400 hours, when he along with PWs Bahar Ali, Liaquat Ali ^{was} sitting at the hotel near the cigarette cabin of his brother Ubedullah. Suddenly a Pajero vehicle parked near cigarette cabin, out of which accused each Lal Mohammad, Mitha Khan, Sulleman and Habibullah alighted, who were armed with K.K's. Meanwhile five persons also came there by two motorcycles, who were also armed with K.K's; complainant party identified them as Gullan, Hadi Bux and Gul Hassan while two were unknown persons. Out of them, accused Lal Mohammad, Mitha Khan, Sulleman, Habibullah, Gullan, Hadi Bux and Gul

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Hassan opened fire on Ubedullah; two unknown accused persons also fired upon Ubedullah; later-on all accused after making aerial firing fled away by Pajero vehicle and motorcycles. Complainant party found fire arm injuries on various parts of the body of Ubedullah who was died. Soon-after leaving PWs over the dead-body of deceased Ubedullah at Taulka hospital Pano Akil, complainant appeared at Police Station and lodged report.

3. Mr.Ali Gul Abbassi, learned counsel for the applicant has contended that name of the applicant does not find place in the FIR, neither description, features nor his hulia were given in the FIR as well as statement u/s 161 Cr.P.C of PWs. Per learned counsel, the present applicant has been implicated on the basis of subsequent statement of the complainant and PWs, which were recorded after 45 days. Moreover, during course of investigation, no incriminating article was recovered from the present applicant to show any nexus with the alleged crime. He has further urged with vehemence that co-accused Mitha Khan, Lal Muhammad, Suleman, Gullan and Habibullah who were nominated in the promptly lodged FIR with specific role have been let off by the police as during course of investigation police could not collect sufficient material against them and the case of present applicant is on better footings than the case of aforesaid accused who have been let off by the police.

4. Conversely, Mr.Sardar Ali Shah Rizvi, APG for the State, very candidly conceded and did not controvert the contentions advanced by the learned counsel for the applicant.

* 5. Heard counsel for respective parties and perused record.

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6. Admittedly, name of the present applicant did not transpire in the FIR neither description or features or marks of identification were given in the FIR or 161 Cr.PC statement of the PWs and the only evidence against the present applicant is further statement of the complainant as well as PWs which were recorded after 45 days. Besides above, no recovery has been effected from the present applicant and co-accused Mitha Khan and others who are nominated in FIR with specific role were found innocent and their names have been placed in Column No.2 of the challan. In view of above, no sanctity can be attached to the prosecution version and apparently case of the applicant requires further inquiry as there are no reasonable grounds to believe that applicant has committed an offence punishable for death or imprisonment for life i.e. 10 years falling within prohibitory clause of Section 497 Cr.P.C.

7. For the foregoing reasons, instant bail application is allowed, consequently applicant is admitted to bail, subject to furnishing his solvent surety in the sum of Rs.300,000/= (Rupees Three Lac Only) and P.R Bond in the like amount to the satisfaction of the trial Court.

The Criminal bail application is disposed of.


JUDGE


JUDGE

Brohi