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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Crl. Bail Appln: No.S-384 & 423 of 2012.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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01.8.2013:

FOR HEARING:

Messrs: Habibullah G. Ghouri, and Safdar Ali G. Bhutto, advocates for applicants.

Mr. Sarfraz Khan Jatoti, advocate for complainant.

Mr. Qazi Mohammad Bux, State Counsel.

SALAHUDDIN PANHWAR, J- Through instant order, I will decide two applications being Crl. Bail Application Nos.S-384 & 423 of 2012 filed by applicant Sabir Ali Chandio and Safdar Ali Chandio in Crime No.67/2011 of Police Station Gaji Khuhawar under section 302, 324, 148, 149, PPC.

2. Precisely, relevant facts are that complainant Ali Murtaza lodged FIR, wherein it is contended that they have share in Anhoon lake with the accused persons and they were receiving the share but the same was denied by the accused persons, therefore, they had altercation, thereby accused persons were annoyed and they were having intention that they will cause harm to the complainant party. On the fateful day, complainant along with his brothers Saifullah, Ali Raza and cousin Balouch Khan were on the way towards Gaji Khuhawar city, while they were intercepted by accused Rustam, Safdar Ali, Himath Ali, Sabir Ali, having guns. while Accused Rustam and Pehlwan caused fire shots upon Saifullah, who on receiving injuries fallen down, where-after accused Safdar (applicant) caused firearm injuries, which also hit him; whereas accused Himath Ali and Sabir Ali (Present applicant) caused fire shots injuries to Balouch Khan. On hue and cry, many villagers converged there and accused persons escaped away. Thereafter, complainant found multiple injuries on the body of injured Saifullah and injured Balouch Khan on vital part of the body. They brought them at Taluka Hospital Warrah, got reference letter and were on the way towards Larkana Hospital, during journey Saifullah succumbed to the injuries, while Balouch Khan was

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admitted in emergency ward for treatment. Complainant approached to the Police Station and lodged FIR.

3. It is further revealed that during investigation two accused Rustam and Pehlwan were declared innocent and their names were placed in column No.2; rest of the accused were sent up for trial, but trial Court joined them as accused.

4. Learned counsel for the applicants, *inter alia*, contend that motive is unbelievable, FIR is delayed for about two hours and thirty minutes which is not explained properly; two accused persons, who were alleged with main allegations of causing injuries to deceased Saifullah were declared innocent by the Investigating Officer; specific injuries are not attributed to the applicants that who caused fatal injuries to deceased. Statements of two witnesses were recorded with the delay of one day, whereas statement of injured Balouch Khan was also recorded with the delay of fifteen days. Ocular version is in conflict with the medical version as there is difference in the time of death, according to the post mortem, deceased died instantaneously, whereas in the ocular version, it is stated that they brought at Taluka Hospital and thereafter in the way towards Larkana hospital, injured succumbed to the injuries, therefore instant case requires further probe and applicants are entitled for bail. In support of his contention, he has relied upon the cases of Jaffar and others 1980 SCMR 784, Amjad and another versus The State 1982 SCMR 955, Shafi Mohammad versus The State 2002 P.Cr.L.J 494, Ahmed versus The State 2007 P.Cr.L.J 987 and Muhammad Mumtaz versus The State 2004 P.Cr.L.J 1875.

5. Conversely, learned counsel for the complainant contends that according to the post mortem report, the deceased sustained multiple injuries on vital part; specific role is assigned to both of the applicants; difference regarding time of death as mentioned in post mortem report and ocular version, requires deeper appreciation, such exercise is not permissible at this stage, injured was having four fire shot injuries, therefore, the applicants are not entitled for bail and in support of his contention, he has relied upon un reported decision of this Court vide CrI. Bail Appln. No.S-238/2012 decided on 01.2.2013.

6. Learned State Counsel argued that except ocular version, circumstantial evidence is also against the applicants, as during investigation crime weapons were recovered along with cartridge.

7. Heard counsel, Perused the record.

8. After careful consideration to the contentions raised by the respective counsels and meticulous examination of available record, it is manifest that the applicants have been implicated by the complainant and eye witnesses in instant case with specific role. Applicant Safdar is alleged to have caused gunshot injuries to deceased Saifullah, whereas applicant Sabir Ali caused gunshot injuries to injured Balouch Khan, medical evidence reveals that deceased and injured were having multiple firearm injuries, therefore, there is no difference between ocular and medical evidence with regard to the nature and seat of injuries as both accounts are in same line. With regard to the time difference as pleaded by learned counsel for the applicants that according to medical report deceased died instantaneously, whereas in the ocular version, it is surfaced that injured succumbed to the injuries during journey towards hospital; it is suffice to say that such aspect, cannot be termed conflict in medical and ocular version, moreover, same requires deeper appreciation, ^{which} ~~same~~ is not permissible at bail stage.

9. So far as to the plea of applicants, that two accused were declared innocent by Investigating Officer and their names were placed in column No.2, hence instant matter requires further enquiry. It is settled principle of law that *ipse dixit* of the police is not binding upon the Court(s) while deciding the bail application(s). However, same can be looked into coupled with the other material, reference, if any, can be made to the case of Perwaiz Iqbal V. The State reported in 2000 SCMR 1599. On this touchstone, I have also examined the instant case and candidly, deceased and injured were having several injuries on their vital part of bodies. Further, it has come on record that both accused Rustam and Pehlwan., who, were let off by police have been joined by the trial Court, therefore, in any way it cannot be said that such aspect is helpful to the applicant when it is matter of record that injured and other witnesses have supported the prosecution

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case. Besides, circumstantial evidence in shape of recovery of weapons used in crime has been effected from the applicants/accused.

10. With regard to the case law relied upon by the learned counsel for the applicants; it is settled proposition of law that in criminal administration of justice, every case has to be decided on its own facts and circumstances, however, principles laid down in series of decisions, which falls within the scope of *stare decises* or having binding fact under the constitution of Pakistan, has to be followed. Keeping in view the said legal principle, I have scanned the referred case law and with profound respect, same are on dissimilar facts and circumstances hence are not applicable to the case of applicants.

11. Keeping in view the given circumstances, the applicants have failed to bring their case within the purview of sub section (2) of Section 497, Cr.P.C, thus they are not entitled for post arrest bail. Accordingly, this bail application merits no consideration and the same is dismissed.

12. Needless to mention here that the learned trial Court shall not be influenced by observations made in this order while deciding the case of the applicants as the observations made hereinabove are tentative in nature.


Judge

M.Y.Panhwar/**