

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

1st Cr. Bail Appln. No.D-23 of 2020

Ghulam Mustafa Jafferri
Vs
The State

Applicant : Through Mr. Habibullah G. Ghouri, Advocate.
State : Through Mr. Mohammad Noonari, Deputy Prosecutor General.
Complainant : Through Mr. Ahmed Bux Abro, Advocate.

Date of hearing : 25.08.2020.
Date of Decision : 25.08.2020.

ORDER.

Through this criminal bail application, the applicant seeks post arrest bail in Crime No.35/2020, registered at Police Station Naparkot, under Sections 386, 387, 148, 149, 504, PPC read with Section 6/7 of Anti-Terrorism Act, 1997. The bail application of the applicant stands dismissed by the trial Court vide order dated 11.07.2020.

2. We have heard learned Counsel for the applicant, learned Counsel for the complainant as well as learned DPG and our observations are as under:

- (i) The case of the prosecution as per the FIR appears to be that the complainant used to look after the land of her brother and some days ago (i.e. of the incident in question) the applicant demanded 'bhatta' of rupees fifty lacs and also asked her to stop cultivating her land. It is further stated that on the day of incident i.e. 25.07.2020 she was looking after the land with her relatives, where they saw and identified accused Ghulam Mustafa, the present applicant, and other co-accused, armed with Kalashnikovs and T.T. Pistols, and then applicant abused the complainant and asked her as to why she has come on the land and has not paid the demanded 'bhatta' of rupees fifty lacs as yet

and on her refusal they pointed their weapons, created terrorism and extended threats of murder and then escaped away.

- (ii) On perusal of the FIR of the present incident, it reflects that the role assigned to all other accused is not dissimilar to that of the present applicant. It is an admitted position that all other co-accused have either been granted pre-arrest bail or post arrest bail by the trial court, whereas the bail application of the present applicant has been dismissed. The Counsel for the complainant while confronted was unable to point out any difference in the role assigned to the present applicant and other co-accused. Perusal of the order of the trial Court also reflects that it is only the demand of 'bhatta' which has prevailed upon the learned Judge to dismiss the applicant's bail application; however, insofar as the demand of 'bhatta' is concerned, admittedly no case was ever registered against such demand allegedly made by the present applicant. Even no date of such demand made earlier is mentioned in the present FIR.
- (iii) In these circumstances the applicant's culpability in the alleged crime with others will be best decided at trial after evidence. Hence, the role appears to be similar, if not identical, and on the rule of consistency, we are not inclined to deny the concession of bail to the present applicant, as except this, no other reason is available to oppose the concession of bail. Reliance in this regard may be placed on the cases reported as Gulab Khan v Chairman NAB (2020 SCMR 285), Abid v The State (2016 SCMR 907) and Shahid Hussain alias Multani v The State (2011 SCMR 1673).
- (iv) It is also a matter of fact that there is pending litigation, both civil and criminal, amongst the parties and can be a motive to falsely implicate the present applicant in this crime, requiring further inquiry into the guilt of the present applicant.
- (v) It is also an admitted position that the complainant had filed an application under Illegal Dispossession Act in the year 2016 being Complaint No.12/2016 on 02.06.2016, which complaint is pending and had also filed some Criminal Misc. Application No.547/2020 on 16.05.2020 for registration of FIR regarding alleged 'bhatta', which stands dismissed vide order dated 29.05.2020 by the Justice of Peace

at Shikarpur. In these circumstances, the case of the applicant appears to be of further inquiry and the concession of bail must not be denied.

- (vi) The learned DPG has not been able to fully support the case of the prosecution, as, according to him, neither any date of the alleged demand of 'bhatta' is mentioned in the FIR nor a proper complaint to that effect, whereas the case is only of threat and not 'bhatta', as alleged. He has rightly placed reliance on the case reported as Sagheer Ahmed v The State (2016 SCMR 1754) to support his contention.

3. In view of hereinabove facts and circumstances of this case, we are of view that applicant has made out a case for grant of bail, on the strength of further enquiry and so also on rule of consistency as other co-accused have already been granted bail, therefore, the applicant is admitted to post arrest bail on his furnishing surety in the sum of Rs.100,000/- (Rupees One Lac) with P.R. bond in the like amount to the satisfaction of the trial Court.

4. Needless to mention that the observations mentioned hereinabove are tentative in nature and shall have no effect on the trial of the case.


JUDGE


JUDGE