

## IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. S-487 of 2016

Mehrab Samejo

Versus

The State

Date of hearing: 06-03-2017

Date of Order: 08-03-2017

The applicant Mehra Samejo  
Through Mr. Imdad Ali Malik,  
Advocate

The Complainant Abdul Majeed  
Through Mr. Gul Feroz Kalwar, advocate

Respondent The State  
Through Mr. Zulifqar Ali Jatoi, learned D.P.G.

**ORDER**

Mohammad Karim Khan Agha, J. By this order I propose to dispose of Cr. Bail. Appln.No. 487/2016 moved by the applicant Mehrab s/o Mehar Samejo for his post arrest bail. The applicant was booked in Crime No. 28 of 2016, U/S 302, 148, 149, 337-H(ii) P.P.C at PS Abad.

2. The brief facts of the case are that the complainant Abdul Majeed lodged the F.I.R. on 17.03.2016 at 1500 hours at Police Station Abad Sukkur, stating therein that Abdul Rasheed s/o Lal Muhammad aged about 38 years is his cousin. That on 17.03.2016, the complainant along with his cousin Abdul Rasheed and brother Muhammad Siddique and son of cousin namely Muhammad Jakhrani came from Karachi to Sukkur and were standing at new Bus Terminal Sukkur at Kandhkot Wagon Stand. At about 0930 hours, they saw and identified the accused





Shamore s/o Kandhar Samejo Mochi, r/o Tangwani at present New Pind Sukkur, 2) Khuda Bux s/o Mehar Samejo Mochi by caste, r/o Ghotki, 3) Sahib Dino s/o Shah Bux Samejo Mochi, r/o Hyderabad, 5) Aijaz Ali s/o Ghulam Muhammad, Siyal by caste, R/o Village Muhammad, Khairpur and one unidentified person who was a stranger for them and would be identified if seen again. All the accused were armed with TT Pistols, accused Khuda Bux instigated all the accused by saying that today he will not spare them and commit murder whereupon the accused **Shamore Samejo Mochi** straight fired from his pistol at Abdul Rasheed who was shot dead and the other accused fired in the air for creating harassment. Thereafter, all the accused escaped by car whilst the complainant party with the help of police bought the dead body to the hospital for post mortem and after post mortem, the complainant lodged the aforesaid F.I.R.

3. Learned counsel for the applicant submitted that initially the applicant was not named in the F.I.R. and that he was added to the case after 23 days of the registration of the F.I.R. on the further statement of the complainant whereby the applicant's case against him is one of aerial firing. He submitted that no specific role has been given to the applicant, the charge has not yet been framed and he has remained in custody for approximately 11 months and is no longer required for investigation purposes. The other accused in the case have absconded and the applicant is not the main accused in the case and rather has been malafidely and falsely belatedly implicated in the case by the complainant 23 days after the incident in order to pressurize his brother to surrender as his brother was named in the F.I.R. and has absconded. Furthermore, no recovery has been made from him of any weapon or ammunition. Learned counsel submitted that it was a case of further inquiry and that the applicant should be enlarged on post-arrest bail.





4. In support of his contentions, he has placed his reliance on the case of **Muhammad Irfan versus State** (2014 SCMR 1347), **Abid Ali V State** (2011 SCMR 161) and **Ehsan-ul-Haq versus State** (2017 SCMR 114).

5. Learned counsel for the State has very frankly conceded that in the original F.I.R, the applicant had not been named as an accused and there was no explanation as to how he came to be added as an accused after 23 days except to pressurize his brother who was originally named as accused in the case to surrender. In these circumstances, he was of the view that the applicant was entitled to post arrest bail.

6. Learned counsel for the complainant has vehemently opposed the grant of post arrest bail to the applicant. He submitted that by the complainant's further statement the applicant has been fully implicated in the offence. It was a case of common intention and that the applicant had carried out ariel firing and was fully supporting the other accused in their murderous intention, that the applicant's case fell within the prohibitory clause of Section 497 Cr.P.C. and there was sufficient material on record to connect him to the commission of the offense. He also pointed out that the post arrest bail of the applicant had already been rejected by the learned V-Additional Sessions Judge, Sukkur vide order dated 28-06-2016 which he fully supported.

7. In support of his contentions he placed reliance on the cases of **Zafar Hussain versus State** (2014 SCMR 1591) and **Mst. Shafeen Akhtar versus Malik Mumraiz** (2014 P.Cr.L.J 1415). He has submitted that the applicant is not entitled for post arrest bail and his bail application be dismissed.





8. I have considered the arguments of the learned counsel for the applicant, the State and the complainant, perused the record and considered the case law cited by them at bar.

9. As per settled law it is re iterated that the findings in this order are only of a tentative nature and shall have no effect on the trial proceedings which shall be decided on merit by the learned trial court based on the evidence before it.

10. The case of **Zafar Hussain** (supra) cited by the learned counsel for the complainant, in my view is distinguishable from the instant case in the sense that one of the main reasons which guided the Honourable Supreme Court in recalling the bail in that case was the fact that the applicant had been a fugitive from justice for about one and half year and was arrested at the Airport by the F.I.A authorities when he was attempting to leave the country and as such there was a strong apprehension of his absconsion. Likewise the case cited by the learned counsel for the complainant reported as **Mst. Shafeen Akhtar** (supra) is also distinguishable from the instant case as the respondents in the aforesaid case were named in the F.I.R. and were accused of firing at the other party.

11. In the instant case, the applicant was neither an absconder nor had he fired at any party. He was not named in the original F.I.R. and was only added after the lapse of 23 days on the further statement of the complainant. The complainant has given no explanation as to why he did not originally name the applicant in the F.I.R. especially since one of the main accused was his brother and as such the applicant was also known to the complainant. The involvement of the applicant in the offence in my view seems to be an after thought and seems to be a tactic which the complainant is using in order to compel his brother who is one of the originally named persons in the F.I.R. to surrender.





12. Furthermore in the F.I.R. **only Shahmore Samejo Mochi** has been shown as accused of making straight firing on the deceased. The other accused (even if they did include the applicant which in my view is highly doubtful based on facts and the circumstances of the case) only made ariel firing.

13. So far as the impugned order is concerned it states in its operative part, that all the accused made straight firing on the deceased, which is reproduced as under:-

"From perusal of record, it appears that the name of present applicant/accused has disclosed by the complainant in his further statement U/S 162 Cr.P.C recorded before the police concerned. **Record further reveals that all the accused persons including present applicant/accused were having armed with deadly weapons at the time of incident viz. T.T pistols and on the instigation of accused Khuda Bux the accused persons made straight fires from their respective pistols, which hit to deceased Abdul Rasheed, while the present applicant/accused was present at the spot with deadly weapons viz. pistols and he also made fires in the air in order to create harassment to the complainant party hence the present applicant/accused has shared the common intention in the commission of offence, which is heinous one and his name was disclosed by the complainant in his further statement recorded before the police U/S 162 Cr.P.C.(bold added)**

14. In my view the impugned order is largely in contradiction with the F.I.R. and the later statement of the complainant which states that apart from **Shahmore Samejo Mochi** who made straight firing all the other accused persons made firing in the air. Nowhere in the F.I.R. or in the further statement of the complainant is it stated that all the accused made straight firing.

15. In the case of **Abid Ali V State** (2011 SCMR 161) it was held as under at P.165:



"It may also be observed that even for the purposes of bail law is not to be stretched in favour of the prosecution as law laid down by this court in **Amir V State** (PLD 1972 SC 277). **It is an admitted fact that the name of the petitioner is not mentioned in the F.I.R but his name was included in the list of the accused supplementary**



statement. There is no explanation available in this regard, therefore the case of the petitioner falls under the category of further inquiry, see Tahir Abbass V the State (2003 SCMR 426). Although the challon has been submitted in the court and the case was fixed for hearing but still prima facie the case of the petitioner appears to be one of further inquiry and is covered under the provisions of S.497 Cr.PC then it becomes the right of the accused that he be released on bail and practice of refusal in such cases where challon is submitted should not be a bar to refuse a right"

16. In the case of **Muhammad Irfan** (supra) in a similar case concerning a similar offence, it was observed by the Honourable Supreme Court as under:-

"3. Learned counsel for the petitioner seeks bail on the ground that petitioner is not attributed any injury either to the deceased or to any eye-witness; that petitioner's involvement is a product of mala fides; that all the three brothers have been made accused; that petitioner is in judicial lockup ever-since his arrest and no more required for further investigation.

4. Learned counsel for the complainant and learned Additional Prosecutor-General have opposed the petition. According to them, petitioner had instigated the co-accused; that he was armed at the time of occurrence; that he resorted to firing which did not hit anyone and that he is vicariously liable for murder of Liaquat.

5. Having considered the submissions made, we find that admittedly the petitioner is not attributed any firearm injury either to the deceased or to the eye-witnesses. The deceased received only one firearm injury which is attributed to co-accused Muhammad Imran, petitioner's brother. In the afore-referred circumstances, the question of petitioner's guilt would require further inquiry. "

17. Likewise in the recent similar case of **Ehsan-ul-Haq** (supra), it was observed as under:-

"After hearing the learned counsel for the parties and going through the record we have observed that admittedly the present petitioner had not been nominated in the F.I.R. and during the investigation his name had been introduced by way of replacement of another accused person mentioned in the F.I.R. A perusal of the F.I.R. shows that it was Gulraiz Mumtaz co-accused who had allegedly fired at and killed Sarfraz Ali deceased and thereafter some co-accused had fired at the complainant party and one of the fires of the accused party had hit and injured Gulraiz Mumtaz co-accused who was thereafter whisked away from the place of occurrence by his co-accused. It is not denied that the



petitioner had not caused any injury to Sarfraz Ali deceased and there is a lot of confusion in the record of investigation as to whose fire had actually hit Gulraiz Mumtaz co-accused. In his statement made before the police the said Gulraiz Mumtaz co-accused had not attributed any firearm injury to the present petitioner. The investigation of this case has already been finalized and Challan has been submitted and, thus, physical custody of the petitioner is not required at this juncture, for the purpose of investigation. For what has been discussed above we have found the case of the petitioner to be a case calling for further inquiry into his guilt within the purview of sub section (2) of Section 497 Cr.PC" (bold added)

18. Due to the belated involvement of the applicant in this matter (after 23 days) by the complainant which based on the facts and circumstances of the case it seems may be on account of ulterior motives as such delay has not been explained at all by the complainant, the fact that it is still unclear whether the applicant was present or not when the firing took place and even if he was present it appears that he only made arial firing based on the similar cases as discussed above of Abid Ali (Supra), Muhammad Irfan (supra) and Ehsan-ul-Haq (supra) I am of the view that this is case of further inquiry.

19. Based on the above discussion the applicant is hereby enlarged on post arrest bail subject to his furnishing a solvent surety in the sum of Rs.500,000/- (Rupees five lacs only) and P.R bond in the like amount to the satisfaction of the Additional Registrar of this court.

20. This criminal bail application stands disposed of in the above terms.

Sd/-  
MOHAMMAD KARIM KHAN AGHA,  
JUDGE.

SUKKUR

Dated: 08-03-2017

Announced by me  
Sd/-8/3/2017  
MUHAMMAD HUMAYON KHAN,  
JUDGE.

