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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.
1st Crl. Bail Appln. No.S-634 of 2020.

Date	Order with signature of Hon'ble Judge
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1. For orders on office objection.
2. For hearing of Bail Application.

Mr. Azhar Hussain Abbasi, advocate for the applicant.
Mr. Abdullah Kehar, advocate for the complainant.
Mr. Aitbar Ali Bullo, Deputy Prosecutor General.

Date of Hearing : 05.04.2021.
Date of decision : 05.04.2021.

ORDER

Omar Sial, J.- Abdul Hayee has sought post arrest bail in crime number 5 of 2020 registered under sections 302, 337-A(iii), 506/2, 504, 147, 149 and 114, P.P.C. at the Golo Daro Police Station. Earlier, his application seeking bail was dismissed on 20-10-2020 by the learned Sessions Judge, Shikarpur.

2. A background to the case is that on 31-5-2020, Tariq Ali lodged the aforementioned F.I.R. reporting an incident that had occurred on 26-5-2020. He recorded that on that day he long with his cousins Saleem, Ali Nawaz, Chakar Ali and Ali Bahar were sitting in his otaque when Abdul Ghafoor, Irshad, Talib, Manjhi, Asghar appeared on the scene, each holding a cudgel. In addition to these persons, the applicant Abdul Hayee and 2 other unknown persons were accompanying them. Abdul Hayee had a brickbat in his hand. An altercation between the two parties occurred in which Abdul Hayee instigated the other assailants to kill the complainant Tariq Ali. On his instigation, Irshad hit Saleem on his head with the cudgel he held whereas Abdul Hayee threw the brickbat he held towards the complainant which missed the complainant but hit Ali Bahar instead. Saleem expired due to the injuries sustained by him.


3. I have heard the learned counsel for the applicant as well as the learned DPG who was assisted by the learned counsel for the complainant. My observations are as follows.

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4. The allegation against the applicant is two-fold, one that he instigated the accused to kill the complainant Tariq Ali and second that he threw a brickbat towards the complainant that missed him but hit Ali Bahar. *Prima facie*, it seems odd to me that if the accused were instigated by the applicant to kill the complainant then what was it that stopped them from doing so and instead hitting Saleem on his head. Tariq Ali was very much available before them for the accused to carry out the deed but it seems that not even a minor injury was caused to him. The delay of 5 days in lodging the F.I.R. at this stage has not been explained to me by the learned counsel for the complainant. While the impact of such a delay will be conclusively decided by the learned trial court, at the moment the complainant throwing the net wide cannot be conclusively ruled out. It is an admitted position that the applicant did not intend to hurt Ali Bahar and that the target of the brickbat he threw was the complainant. Be that as it may, it has been alleged that Ali Bahar was hit on the nose with that brickbat and that the hit caused a fracture of his nose. The preliminary medical report of Ali Bahar dated 28-5-2020 however reveals that when Ali Bahar came to the doctor that day he had two lacerated wounds on his nose which were stitched up. Subsequently, the final medical report reflected that the nose had been fractured. Upon a tentative assessment the medical report does not reconcile with the ocular version as the prosecution appears to be that Ali Bahar was brought to the hospital from the place of incident. Nothing in the record has been shown to me that would show that the injured Ali Bahar had gone elsewhere for treatment after the incident. Similarly, the Final Medical Report reflects that a medicolegal certificate No.924 was issued on 24-6-2020 i.e. before the alleged occurrence. The learned counsel for the complainant has not been able to offer any explanation in this regard. These aspects require clarification at trial. Common intention or common object of the accused in killing Saleem must also be established at trial as it appears from the prosecution case that Saleem was not the target of the alleged attack.

5. In view of the above, the applicant's nexus with the offence is one of further inquiry. Accordingly, he is admitted to bail subject to his

furnishing a solvent surety in the sum of Rs. 50,000 and a P.R. Bond in the like amount to the satisfaction of the learned trial court.


JUDGE S/W