

ORDER SHEET  
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR  
Cr. Bail Application No.S-53 of 2019

| Date | Order with signature of Judge |
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For hearing of bail application

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Mr. Abdul Qadir Khanzada , Advocate for the applicant  
Mr. Sadar-u-ddin Buriro, Advocate for complainant  
Mr. Aftab Ahmed Shar, Addl. P.G

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Date of hearing:       22.04.2019  
Date of order:         22.04.2019

**ORDER**

**ZAFAR AHMED RAJPUT, J:-** Through instant Criminal Bail Application, applicant Saifal son of Loung Khan has sought pre-arrest bail in Crime No.128/2013, registered at Police Station Naushahro Feroze, under Sections 302, 324, 148 and 149 PPC. His earlier application for grant of pre-arrest bail bearing No.1886/2018 was heard and dismissed by the learned 1<sup>st</sup> Additional Sessions Judge, Naushahro Feroze vide order dated 22.12.2018. Applicant was admitted to ad-interim bail by this Court vide order dated 17.01.2019, now he seeks for confirmation of the same.

2. Briefly stated the facts of the case are that on 04.06.2013 complainant Pir Bux Khokhar lodged the aforementioned FIR alleging therein that he is a school teacher and has enmity with Saleh Machi and in this regard a case is already registered against him; that on 04.06.2013 he and his brothers and nephew attended the Court at Naushahro Feroze and thereafter they were coming towards their village and at about 10.00 a.m when they reached near village Shadi Khokhar, they saw about 15 persons duly armed with weapons including present applicant who started firing upon them; present applicant and co-accused Mumtaz, Gulzar and

Saleh fired at his brother Bakhshan Khokhar with Kalashnikov and pistols, which hit him on his hand, right eye, chest and neck respectively and they making aerial firing and raising slogans went away; that Bakhshan succumbed to the injuries at the spot.

3. Learned counsel for the applicant has mainly contended that enmity between the parties is an admitted fact while the FIR has been lodged after delay of 10 hours hence deliberation and consultation before lodging of FIR cannot be ruled out; that on the day of alleged incident, the complainant Pir Bux was not present at the spot as alleged by him in the FIR as he was present before the Court of 2<sup>nd</sup> Civil Judge & Judicial Magistrate, Naushahro Feroze in Criminal Case No.54/2013 which fact is evident from the case diary of the case dated 04.06.2013; that PWs after due deliberation has also improve their case through their statements recorded under section 164 Cr.P.C on 18.06.2013, which clearly shows malafide on their part due to admitted enmity; that the applicant was shown as absconder in the challan submitted by the police on 19.8.2013, however on coming into his knowledge the fact of lodging of aforementioned FIR and pendency of the Criminal Case, he surrendered before the trial Court on 30.11.2018 along with an application for grant of pre-arrest bail wherein he was admitted to ad-interim bail, however subsequently the same was dismissed on 22.12.2018; that co-accused Mumtaz has already been granted bail by this Court vide order dated 27.03.2015 inter alia considering the fact that the complainant was not present at the relevant time at the scene but he showed his presence at the spot, hence applicant is also entitled for concession of bail on the principle of rule of consistency.

4. On the other hand, learned counsel appearing for the complainant as well Addl.P.G have opposed the confirmation of ad-interim bail granted

to applicant on the ground that the applicant has been nominated in the F.I.R. with specific role of causing fire arm injury to deceased Bakhshan at his hand, which version is well supported from the medical report; that the applicant remained absconder for about five years as such he loses his normal rights.

5. Heard the learned counsel for the parties and perused the material available on record.

6. It is an admitted fact that co-accused Mumtaz who has been implicated with specific allegation of causing fire arm injury to deceased Bakhshan at his right eye, has been admitted to bail by this Court vide order dated 27.03.2015 by observing as under:

*“The complainant has not been satisfactorily able to explain his presence on the spot in view of the court diary dated 04.6.2013 which shows that at about 10.45 a.m on the alleged date of incident he was present before 2<sup>nd</sup> Civil Judge & Judicial Magistrate, Naushahro Feroze and he had informed the Judge that he was in hurry as his brother had been murdered. Since the time of the alleged incident is about 10.00 a.m, therefore, tentatively, it would not be possible for the complainant to be present as stated by him in the F.I.R.”*

7. Besides, it is also an admitted position that the injured PW Mst. Erum, has not implicated the applicant specifically in her statement under section 161 Cr.P.C. It has been argued that the applicant being fugitive of law is not entitled for the concession of bail, suffice to say that abscondance does not come in the way if the accused is otherwise entitled for the concession of bail. No doubt the brother of the complainant has apparently been murdered but in view of the fact that the complainant has not been able to explain his presence on the spot at the relevant time, it is yet to be determined whether the present applicant was having any

role in causing murder of his brother, hence prima-facie the case for further enquiry as envisaged under sub-section (2) of section 497 Cr.P.C has been made out. Therefore, interim bail granted to applicant/accused vide order dated 17.01.2019, is hereby confirmed on the same terms and conditions. Needless to mention here that the observation made hereinabove are tentative in nature and shall not influence the trial Court while deciding the case on merits.

The application stands disposed of.

JUDGE

Suleman Khan/PA