

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No. S- 84 of 2019

Bahadur Sakhani.....Applicant.

Versus.

The State..... Respondent

For Hearing of bail application.

Mr. Ali Akbar Shar Advocate along with applicant.

Mr. Aftab Hussain Shar Advocate for the complainant.

Mr. Khalil Ahmed Maitlo, Deputy P.G for the State.

Date of hearing: 25-03-2019

Date of decision: 25-03-2019

ORDER

ZAFAR AHMED RAJPUT J., Having been rejected his earlier criminal pre-arrest bail application No. 128 of 2019 by learned Additional Sessions Judge-II, Khairpur, applicant/accused Bahadur son of Peerano Sakhani through instant application, seeks pre-arrest bail in Crime No. 03 of 2019 registered at P.S, Kumb-Khairpur under sections 302, 324, 148, 149, 404 & 337H(2) P.P.C. The applicant was admitted to ad-interim bail by this Court vide order dated 31.01.2019, now he seeks confirmation of his bail.

2. Briefly stated, the facts of the case are that on 06.01.2019 at 1030 hours, complainant Sanaullah Sakhani lodged the aforementioned F.I.R alleging therein that on 04.01.2019 he along with his father Ali Gul alias Jejal, brother Noor Khan, relatives Ali Gul and Aslam after purchasing some items were returning from Bozdar Wada City on motorcycles to their village and when at about 7.30 p.m, they reached near lands of Kouro Aradin, where accused,

namely, 1. Ayaz, 2. Imran, 3. Zafar, 4. Ali Gohar, 5. Ghafoor alias Waqar, 6. Raza Ali, 7. Atta Hussain alias Harni, 8. Yar Muhammad, 9. Ilyas, 10. Mujeeb, 11. Muhammad Ali, 12. Bahadur (present applicant) and two unknown persons, all duly armed with weapons, came on a car and two motorcycles. Accused Ali Gohar and Ayaz asked the father of the complainant to return the land purchased by him from them in Deh Talpur Wada, but he refused them, on that accused Ayaz fired from his K.K at Ayaz Ali on his right hip with intention to kill him, accused Ali Gohar fired from his K.K at left thigh of complainant's father Ali Gul, accused Imran fired on Noor Khan at his left leg joint, accused Ghafoor alias Waqar fired on Ali Gul at his left thigh; however the complainant and Aslam succeeded to take shelter of dates and saved themselves, then all accused making aerial firing run away in car and two motorcycles and also took away the motorcycle of complainant's father. Thereafter, they took injured to hospital, where Ali Gul died on the way.

3. Learned counsel for the applicant has mainly contended that the applicant is innocent and has falsely been implicated in this case; that there is inordinate delay of about two days in registration of the FIR which is without any plausible explanation, hence FIR appears to have been lodged after consultation; that only general allegation of making aerial firing has been levelled against the present applicant, otherwise, he has no role of causing injuries to alleged injured persons/PWs and committing murder of complainant's father; as such, role of the applicant for committing the alleged offence requires further enquiry;

that the present applicant has been involved in this case due to enmity as on 02.09.2017, cousin of applicant, namely, Muhammad Ali Sakhani lodged an F.I.R bearing Crime No. 105 of 2017 under sections 302, 148, 149 PPC at P.S, Kumb-Khairpur against the closed relatives of the present complainant, wherein applicant was shown as Mashir of place of incident, whereas his son, namely, Ghulam Shabbir was shown as eyewitness and in that case the cousins of the complainant committed murder of son-in-law of the applicant, hence present FIR is motivated one, wherein the applicant has been nominated mala fide with ulterior motives and since the applicant is respectable person, he will be humiliated by the police in case he is not admitted to pre-arrest bail.

4. On the other hand, learned counsel for the complainant as well as learned Deputy P.G while controverting the arguments of learned counsel for the applicant have opposed the confirmation of bail to the applicant on the ground that he is nominated in the F.I.R by name and he had facilitated the co-accused, who caused murder of father of the complainant and injuries to the PWs by firearms by making aerial firing, hence he shared common object.

5. I have given my anxious consideration to the contentions of learned counsel for the applicant, complainant and DPG as well as perused the material available on record.

6. It appears that the allegations against the applicant in the F.I.R is that he was present at the spot and made aerial firing when alleged

incident took place, wherein father of the complainant and his other relatives sustained firearm injuries and later his father succumbed to injuries on the way to the hospital, and no other overt act has been attributed to him. It is not the case of the prosecution that the applicant has caused any injury to the deceased or to any of the injured persons. The presence of the applicant at the place of incident and his role in the murder of deceased and causing injuries to injured persons will be decided at the stage of trial after recording evidence of PWs. Keeping in view the peculiar facts and circumstances of the case when no vital role has been attributed to the applicant apart from the facts that he had accompanied the co-accused at the time of occurrence, the vicarious liability, if any, calls for further probe within the meaning of Subsection 2 of Section 497, CrPC.

7. For the foregoing facts and reasons, interim pre-arrest bail earlier granted to the applicant vide order dated 31.01.2019 is confirmed on same terms and conditions.

8. Needless to mention here that the observations made hereinabove being tentative in nature would not effect the case of either party.

JUDGE