

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Bail Application No.D-113 of 2015
Cr. Bail Application No.D-16 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
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PRESENT:

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Yousuf Ali Sayeed

Date of Hearing: 21-06-2017.

Date of decision: 21-06-2017.

Applicants/accused: (1) Gul Hassan @ Mazan S/o Muhammad Waris through Mr.Nisar Ahmed S. Chandio, Advocate.

(2) Mohib S/o Ferozuddin through Mr. K.B Lutuf Ali Leghari, Advocate

The State: Through Syed Meeral Shah Bukhari, Additional Prosecutor General, Sindh.

Complainant: Najamuddin through Mr.Inam Ali Malik, Advocate.

ORDER

AQEEL AHMED ABBASI, J:- The aforesaid bail applications have been filed by two accused persons namely Gul Hassan @ Mazan S/o Muhammad Waris and Mohib S/o Ferozuddin, who have been nominated in FIR No.89 of 2014 registered at Police Station Rukkan District Dadu for offences under Sections 302, 384, 148, 149, 109 PPC read with Section 6/7 of Anti-Terrorism Act, 1997.

2. The allegations against the applicants/accused as contained in the FIR are that on 15.10.2014 at 2200 hours, the complainant Najamuddin

got the aforesaid FIR registered for the offence allegedly to have been committed on 14.10.2015 at 1445 hours, wherein it has been stated that accused Gulsher @ Mago Chandio, Shaman @ Shamoo Chandio and Ghulam Mustafa demanded Rs.200,000/- as Bhatta from his father Imamuddin. On refusal, the accused persons threatened Imamuddin. On 14.12.2014 the complainant's father Imamuddin went to Laluddin Mughals Rice Mill for personal work and at about 1445 hours the accused (1) Gul Sher @ Bago, having pistol (2) Mour, having pistol (3) Kheral @ Kharo with wooden strips (4) Ayaz S/o Kheral with K.K (5) Shaman @ Shamoo with Wooden Patti (6) Azam with K.K (7) Mozam with K.K and (8) Mohib with K.K came there and on the show of weapons created terror there asking complainant's father as to why he refused giving Bhatta. Thereafter, accused Gul Sher @ Bago and Mour Chandio hit pistol to Imamuddin with intention to kill him, who received injuries, while accused Kheral @ Kheroo and Shaman @ Shamoo caused wooden strip blow on the head of Imamuddin also with intention to kill him, who fell down on the cot and blood was oozing from the injuries. Thereafter, all the accused persons ran away and the complainant party informed the concerned Police on cell phone, who came at the place of incident and gave letter to the complainant for treatment of his injured father Imamuddin at Civil Hospital Dadu, where Imamuddin died away, hence the present FIR.

3. Mr. K.B Lutuf Ali Leghari, the learned Counsel for applicant/accused Mohib S/o Ferozuddin contended that the applicant is innocent and he has been falsely implicated in the aforesaid crime at the

instance of the complainant in view of tribal dispute between the parties, whereas, the applicant has no connection whatsoever with the alleged offence. Per learned Counsel, the allegations of demanding Bhatta or having caused fire arm injury to deceased namely Imamuddin are not attributed to the present applicant, whereas, his role is only to the extent of his presence at the place of incidence with Kalashnikov in his hands. However, according to the learned Counsel, neither any fire has been made from the said Kalashnikov nor any recovery of Kalashnikov has been effected from the applicant by the Police, who is behind the bars for about 1.1/2 years. Per learned Counsel, even charge has not so far been framed by the trial Court, whereas, the main accused persons are still absconding and the applicant is facing the agony before commencement of the trial. It has been further stated that one of the accused namely Ghulam Mustafa, against whom there is allegation of demanding Bhatta, has been granted bail by the learned Trial Court, whereas, the complainant has not even filed any application seeking his cancellation of bail. It has been prayed that the applicant has made out a case of further inquiry, who may be released on bail, subject to furnishing surety, whereas, according to learned Counsel, the applicant is not involved in any other criminal case and has performed his duties as Police Constable. In support of his contentions, the learned Counsel for the applicant has relied upon the cases reported as *1996 SCMR 1654 (Muhammad Sadiq & another V/s. The State)* and *1999 SCMR 1360 (Faraz Akram V/s. The State)*.

4. Mr. Nisar Ahmed S. Chandio, the learned Counsel for applicant Gul Hassan @ Mazan while adopting the arguments advanced by the learned Counsel for applicant Mohib as stated here-in-above stated that applicant has no role whatsoever with the alleged offence except his alleged presence has been shown at the place of incident with Kalashnikov, whereas, according to learned Counsel, neither any fire has been made from the said Kalashnikov nor any recovery of Kalashnikov has been effected from the applicant. Per learned Counsel, the allegations of demanding Bhatta and having committed murder of complainant's father deceased Imamuddin are not attributed to the present applicant, who is innocent and has been falsely implicated in the aforesaid crime. It has been further stated that the applicant was not even present at the place of incident and has also taken the plea of alibi and on the fateful day he was present in the office of District Forest Officer, Dadu for discharging his duties. Per learned Counsel, the applicant has made out his case for further inquiry, therefore, it has been prayed that the applicant may be allowed bail on furnishing a solvent surety. Learned Counsel, in support of his contentions, has relied upon the cases reported as 2012 SCMR 1137 (*Ehsanullah V/s. The State*), 2012 YLR 701 Lahore (*Muhammad Imran alias Mani & another V/s. The State*), SBLR 2015 SC 209 (*Fazal-ur-Rehman V/s. The State*) and 2016 SCMR 18 SC (*Zaigham Ashraf V/s. The State & Others*).

5. Conversely, Mr. Inam Ali Malik, the learned Counsel for the complainant has opposed the bail to the applicants/accused as their presence at the place of incident and with the common intention to

demand Bhatta and commit murder of deceased Imamuddin disentitles the applicants/accused to have been granted bail.

6. Syed Meeral Shah Bukhari, the learned Additional Prosecutor General appearing for the State submits that though the role of the aforesaid applicants/accused with regard to main allegation of demanding Bhatta and having caused fire arm injury to the deceased, who has expired, is not attributed in the FIR, however, their presence at the place of incident with common intention to commit the offence cannot be ruled out.

7. We have heard the learned Counsel for the applicants, learned Counsel for the complainant and learned Additional Prosecutor General for the State as well as perused the record and case law with the assistance of learned Counsel for the parties.

8. From the perusal of the FIR, it transpires that the present applicants namely Mohib S/o Ferozuddin and Gul Hassan @ Mazan S/o Muhammad Waris have been assigned the role only to the extent of their presence at the place of incident, holding Kalashnikov in their hands. However, they have not been assigned direct role with regard to either demanding Bhatta or having caused fire arm injury to deceased Imamuddin, who subsequently died on account of having fire arm injury caused due to pistol shots and wooden slabs, which has been actually attributed to the accused namely Gul Sher @ Bago, Mour, Kheral @ Kharo and Shaman @ Shamoo and not to the present applicants. We have also noted that the present applicants are behind the bars for

more than 1.1/2 years, whereas, the charge has not yet been framed by the Trial Court and none of the prosecution witnesses has been examined.

9. For what has been stated above, we are of the considered view that the applicants/accused, who have no criminal record in the past, have made out their case for further inquiry. Consequently, both the applicants namely Gul Hassan @ Mazan S/o Muhammad Waris and Mohib S/o Ferozuddin are admitted to bail, subject to their furnishing a solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand Only) each and P.R Bond in the like amount to the satisfaction of the learned Trial Court.

10. The observation made here-in-above are tentative in nature, whereas, the trial shall proceed in accordance with law and shall be decided on the basis of evidence, which may be produced during trial. It may further be observed that if the present applicants misuse the concession of bail in any manner, the learned Trial Court shall be at liberty to proceed against them in accordance with law.

JUDGE

JUDGE

Shahid