

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail Application No.S-136 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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FOR HEARING.

Dated: 07.08.2017

Mr. Muhammad Ahmed Khan, Advocate for applicant.

Mr. Wali Muhammad Khoso, Advocate for complainant.

Mr. Shahid Ahmed Shaikh, Deputy Prosecutor General

ORDER

ARSHAD HUSSAIN KHAN, J:- Through this order, I intend to dispose of the bail application filed on behalf of the applicant/accused involved in Crime No.35 of 2016 of P.S Lundo District Sanghar for offences under Sections 302, 109, 337-H(ii), 504 & 34 PPC.

2. Briefly the facts mentioned in the bail application are that on 23.12.2016 at 2100 hours, complainant Rustam S/o Muhammad Arab Mangrio resident of village Bhuro Mangrio, Taluka Shahdadpur lodged FIR at P.S Lundo, wherein it is stated that on 20.12.2016, accused Ajab Gul started to take the bricks and cement brought by N.G.Os for construction of bridge in the morning time, to whom the brother of the complainant namely Faiz Muhammad Mangrio, aged about 55 years, restrained on which Ajab Gul annoyed and extended threats to Faiz Muhammad for dire consequences. On the same day, at around 7:00 p.m, the complainant alongwith his brother Faiz Muhammad and other inmates of the house were at their house, where suddenly accused (1) Ajab Gul S/o Haji Master, armed with Hatchet (2) Haji Master S/o Jan Muhammad Mangrio, armed with Pistol and (3) Rasheed S/o Khair Muhammad, armed with Lathi, entered into the house of the complainant, out of them accused Ajab Gul raising *Hakkal* asked Faiz Muhammad, brother of the complainant, that he would not be spared out today and be killed, saying so, accused Ajab Gul inflicted hatchet blow from its sharp side to Faiz Muhammad over his head right side and accused Rasheed inflicted lathi blow to Faiz Muhammad over his head on back side,

while accused Haji Master fired from his Pistol in the air and Faiz Muhammad raising cry fallen down. The complainant, his brother Secretary and their nephew Altaf S/o Shabir Mangrio and other inmates of the house raised *Hakkal*, on which the accused after abusing went away. Thereafter, the complainant party took the injured to P.S and obtained letter and got him admitted in Taluka Hospital, Shahdadpur and got recorded N.C at P.S Lundo District Sanghar. The injured was referred to LUMHS Hyderabad and got him treated there and returned back to Taluka Hospital, Shahdadpur, the Doctor again referred the injured to LUMHS Hyderabad and they took him, wherefrom he was sent for C.T Scan, which was got privately. On 22.12.2016 they brought the injured to Taluka Hospital, Shahdadpur, where the Doctors started his treatment but on 23.12.2016 at 0430 hours, injured Faiz Muhammad expired during his treatment in the hospital. Thereafter, the complainant informed Lundo Police Station on mobile phone and the police arrived in the hospital and completed necessary formalities. After the postmortem of the deceased, his body was handed over to the complainant, he sent the dead body through the witnesses and relatives to the village. The complainant also came to know that the above accused at the instigation of Darhoon S/o Soomer Mangrio and Zulfiqar S/o Jan Muhammad Mangrio has caused blows to his deceased brother. The complainant lodged FIR against the accused persons on the above effect.

3. Per learned Counsel, during the investigation the applicant/accused Darhoon, co-accused Ajab Gul and Rasheed have been arrested by the police after usual investigation and the case has been challaned in the Court of learned Civil Judge and Judicial Magistrate-I, Shahdadpur, which is pending adjudication under Section 87 & 88 Cr.P.C against absconding accused Haji Master S/o Jan Muhammad and Zulfiqar S/o Jan Muhammad Mangrio. Per learned Counsel, the Criminal Bail Application No.56 of 2017 was filed on behalf of the applicant/accused, which was dismissed by the learned Additional Sessions Judge, Shahdadpur vide order dated 10.02.2017. Thereafter, the present bail application has been filed.

4. During the course of the argument, the learned Counsel for the applicant/accused contended that the case against the accused is false,

fabricated and has been made with ulterior motives. There is no independent eye witness of the alleged incident in the case. Furthermore, there is delay of three days in lodging of the FIR, which shows that the FIR has been lodged after consultation and the applicant/accused has been falsely involved in the case. It is also contended that neither the complainant nor the P.Ws have disclosed the source of information about the involvement of the applicant/accused in the crime. It is also argued that no motive or enmity of the applicant/accused is suggested by the complainant or his brother deceased Faiz Muhammad. Furthermore, as per statement of the P.Ws, the applicant/accused was not present at the place of the incident. It is also argued that the FIR is contradictory with N.C report, which shows that the deceased was not caused with hatchet blow or lathi blow by the present accused/applicant. It is also argued that the allegation against the present applicant/accused is only to the extent that he instigated the other accused persons for the crime, therefore, in view of the facts and circumstances, the case of the applicant/accused is distinguished from the case of other accused and no active role is assigned to the present applicant/accused, who is innocent and his case is of further inquiry. The learned Counsel in support of his contentions has relied upon the following judgments.

- i) 2010 SCMR 956 (Miandad & another v. The State)*
- ii) 2011 SCMR 1543 (Subeh Sadiq alias Saabo alias Kalu v. The State)*
- iii) 2016 MLD 1072 (Asmat Ali alias Mattay v. the State)*
- iv) 2017 SCMR 279 (Qurban Ali v. The State & Others)*
- v) 2017 MLD 349 (Muhammad Azam Khan v. The State & another)*

5. On the other hand, learned Counsel for the complainant has given no objection to the grant of this bail application as according to him some negotiation of compromise/settlement is going on between the legal heirs and the present applicant/accused.

6. On the contrary, the learned D.P.G, while supporting the order passed by the learned Trial Court, has opposed this bail application and

contended that though the allegation against the present applicant/accused is only to the extent of instigation/*Hakkal* and further the no objection given by the complainant cannot be made grounds for allowing this bail application as according to the learned D.P.G the complainant is not the legal heir of the deceased, hence, he cannot give no objection to the grant of this bail application. It is also contended by the State Counsel that the complainant had resisted the bail application before the Trial Court. It is also contended that the name of the present applicant/accused has been mentioned in the FIR with the specific wording that on the instigation of applicant/accused Darhoon, the accused persons committed murder of deceased Faiz Muhammad, hence, the role of instigation is very much clear against the present applicant/accused and his involvement is also there. It is also contended that the offence stated to have been committed on the instigation of the applicant/accused and all the accused in league went to the scene of offence, offered common intention and all those who were assisting completion of their object, equally be guilty of offence and such role cannot be ignored at this stage, hence, the applicant/accused is not entitled to be released on bail.

7. I have heard learned Counsel for the parties as well as learned D.P.G and also perused the record as well as the case law cited at the Bar.

8. From the perusal of the record, it appears that the allegation against the present applicant/accused is only to the extent that he raised *Lalkara*/instigation during the occurrence of the crime and keeping in view the ratio *dicendendi* settled by the Hon'ble Supreme Court in the recent judgment in the case of *QURBAN ALI V/S. THE STATE & OTHERS (2017 SCMR 279)*, wherein the Hon'ble Supreme Court in similar circumstance of the case has granted bail to the applicant/accused on the ground that there has been no attribution of any overt act during occurrence against the applicant/accused except the role of raising *Lalkara*. In the present case, the allegation against the accused is of same nature, hence, keeping in view the present circumstances of the case, the learned Trial Court has to determine, after recording evidence, whether the applicant/accused is vicariously liable for the acts of his co-accused. Thus, the present situation calls for further probe into the matter,

the beneficiary of which could be thus none other but the applicant/accused. As such, I hold the accused entitled to the concession of bail.

9. For what has been stated above, I am of the considered view that applicant/accused Darhoon S/o Soomer Mangrio has made out his case for further inquiry. Consequently, he is admitted on bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand) and P.R Bond in the like amount to the satisfaction of the Trial Court.

10. Needless to say, the observations made here-in-above are tentative in nature and only for the purpose of this bail application. Nothing herein shall affect the determination of the facts at the trial or influence the Trial Court in reaching its decision on merits of the case.

JUDGE

Shahid