

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Criminal Bail Application No.D-29 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on M.A 9676/18
2. For orders on office objection
3. For hearing of main case

06.02.2019.

Mr. Hameedullah Dahri alongwith Mr. Riazuddin Qureshi, Advocate for applicant.

Mr. Kamran Baig, Advocate for complainant.

Mr. Nazar Muhammad Memon, A.P.G.

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By means of this application, Applicant, who is accused in Crime No.183 of 2015 of P.S Sanghar, under section 302, 324, 353, 395, 337-H(ii), 427, 120-B, 114, 147, 148, 149, PPC & 6/7 ATA, is seeking post arrest bail.

The incident is shown to have taken place on 15.12.2015 at about 1245 hours near Naka No.4, Sanghar Bakhoro Road in Sanghar City. It is alleged that the applicant alongwith 19 other co-accused all of whom are nominated in the F.I.R. duly armed with weapons attacked the complainant party when they were going to Bakhoro road from Sanghar for election campaign. Resultantly four persons namely PC Nabi Bux, PC Ashique, Gul Muhammad Mari and Syed Gul Muhammad Shah lost their lives, whereas six other persons became injured. The F.I.R. of the incident was registered on 17.12.2015 at 2000 hours after delay of two days. In all twenty (20) accused are nominated in the F.I.R., however the specific role is assigned to only accused Dadan Nizamani and Aamir alias Bilu Nizamani whereas against all the remaining accused including applicant no specific role has been assigned in the F.I.R. and they have been shown present at the spot armed with weapons.

The applicant could not be arrested in the investigation and was shown as absconder in the challan. However, he surrendered before this court on 12.10.2017 by filing a Criminal Bail Application No.D-58/2017 and was granted protective bail vide order dated 12.10.2017 for one week. In terms thereof he surrendered before the trial court however, he was taken into custody on 04.12.2017 on dismissal of his pre-arrest bail application and since then he is in jail. Thereafter, applicant moved an application for post arrest bail but the same has been dismissed by the trial court vide impugned order dated 11.01.2018 mainly on the ground that the applicant has remained fugitive from law for more than one year and as such is not entitled to the relief of bail.

Learned Counsel for the applicant has argued that the applicant is innocent and has been falsely implicated in this case; that he is entitled to grant of bail on the rule of consistency as co-accused namely Faiz Muhammad, Abdul Karim, Abdul Jabbar and Sajid Sarfraz, who have been assigned similar role by the complainant and are shown armed like applicant, have been granted pre-arrest bail by the trial court; that the case of the applicant is on the same footing and as such he is also entitled to the same relief; that absconsion of the applicant was not deliberate as he was not aware of registration of the present case; that he was all along available at his residence but police wrongly shown him as absconder and proceedings u/s 87 and 88 Cr.P.C were not properly conducted and on the basis of managed reports of the police, he was declared proclaimed offender; that as soon as he came to know about pendency of instant case, he voluntarily surrendered before this court and was granted protective bail. Learned Counsel further contended that even otherwise the applicant has been sufficiently punished as he has remained in jail for more than one year, while co-accused with similar role have been granted pre-arrest bail. In support of his contentions learned Counsel has placed reliance on the cases reported as 2014 SCMR 1347, 2009 SCMR 299, 1996 SCMR 1125, 2018 P Cr. L J Note 195 and 2011 SCMR 1543.

On the other hand, learned Counsel for complainant as well as learned Additional Prosecutor General Sindh although have opposed grant of bail to the applicant but have not disputed the fact that the co-accused with the similar role to that of applicant have been granted pre-arrest bail by the trial court and his bail has been dismissed on account of his abscondence.

We have considered submissions of the parties, perused the material available on record and the case law relied upon at bar. It is not disputed that the co-accused, who have been assigned similar role of being present at the spot duly armed with weapons like the present applicant have been granted pre-arrest bail by the trial court on merits and his bail plea has been declined merely on the ground that he was absconder. It is well settled proposition that if an accused is otherwise entitled for bail on merits, mere his abscondence would not come in way for granting him bail. The applicant has remained in jail for more than one year and has been sufficiently punished for his alleged abscondence. His case is similar to that of already bailed out accused on merits, and is therefore entitled to the same treatment.

Accordingly, this bail application is allowed. The applicant is granted bail on the rule of consistency on furnishing a solvent surety in the sum of Rs.5,00,000/- (Rupees Five Lac) and P.R Bond in the like amount to the satisfaction of trial court. Listed miscellaneous application is also disposed of.

JUDGE

JUDGE