

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

CrI. Bail Appln: No. S-59 of 2018.

Pervez alias Paro and others.Applicants.

Versus.

The State.Respondent.

Mr. Badal Gahoti, Advocate for the Applicants.

Ms. Sana Memon, APG.

Syed Shafique Ahmed Shah, Advocate for the complainant.

Date of hearing and order 21.06.2018.

ORDER

IRSHAD ALI SHAH, J. It is alleged that the applicants with rest of two unknown culprits after having formed an unlawful assembly and in prosecution of their common object, caused fire shot (with country made pistol), lathis and hatchet injuries with its backside to complainant Muhammad Bachal and P.Ws. Kifayat, Imran and Ghulam Nabi with intention to commit their murder and then went away by insulting them, for that the present case was registered.

2. On having been refused post-arrest bail by the learned trial Court, the applicants have sought for the same from this Court by making the instant bail application under section 497 Cr.P.C.

3. It is contended by the learned counsel for the applicants that the applicants being innocent have been involved in this case falsely by the complainant party due to long standing enmity, there is delay of one day in lodging of the FIR, there is delay of three days in recording 161 Cr.P.C. statements of the P.Ws, there is counter version of the incident, wherein all

the accused have been admitted to bail, there is no recovery of any sort from the applicants and they are in custody for about six months. By contending so, he sought for release of the applicants on bail, as according to him, their case is calling for further inquiry. In support of his contention, he relied upon the cases of **Muhammad Shahzad Siddique v. The State and another (PLD 2009 SC 58)** and (2) **Liaqat Ali v. The State and others (2013 SCMR 1527)**.

4. While rebutting the above contention, learned counsel for the complainant has opposed to grant of bail to the applicants by contending that they are reluctant to proceed with their case before the learned trial Court.

5. Learned APG has supported the impugned order.

6. I have heard learned counsel for the parties and perused the record.

7. There is one day delay in lodging the FIR, same could not be lost sight of. 161 Cr.P.C. statements of the P.Ws. were recorded with further delay of three days to FIR without any plausible explanation, which appears to be significant. Parties are already disputed, there is counter version of the incident being FIR Crime No.63/2017 of Police Station Shahpur, there is no recovery of any sort from the applicants, which party is aggressor and which party is aggressed upon, it requires determination at trial, the applicants are in custody for about six months. In these circumstances, it is rightly being contended by the learned counsel for the applicants that they are entitled to be released on bail, as their case is calling for further inquiry.

8. In case of **Shoaib Mehmood Butt v. Iftikhar-ul-Haq and 3 others (1996 SCMR 1845)**, it was observed that;

“In case of counter-version arising from the same incident, one given by complainant in F.I.R. and the other given by the

opposite party case law is almost settled that such cases are covered for grant of bail on the ground of further inquiry as contemplated under section 497(2), Cr.P.C. In such cases normally, bail is granted on the ground of further enquiry for the reasons that the question as to which version is correct is to be decided by the trial Court which is supposed to record evidence and also appraise the same in order to come to a final conclusion in this regard. In cases of counter-versions, normally, plea of private defence is taken giving rise to question as to which party is aggressor and which party is aggressed. In the case of Fazal Muhammad v. Ali Ahmed (1976 SCMR 391) in cross-cases the High Court granted bail to the accused on the ground that there was probability of counter version being true as some of the accused had received injuries including a grievous injury on the head of one accused. It was held by this Court that in such circumstances the High Court was right in granting bail and no interference was warranted. In the same context, reference can be made to the case of Mst. Shafiqan v. Hashim Ali and others (1972 SCMR 682).”

9. In view of above while relying upon the case law, which is referred by the learned counsel for the applicants, the applicants are admitted to bail subject to their furnishing surety in the sum of Rs.50,000/= (Fifty thousand) each and PR bond in the like amount to the satisfaction of learned trial Court.
10. The instant bail application stands disposed of in above terms.

JUDGE