

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Bail Application No.1143 of 2020

Applicant Abdul Qadir @ Chakar son of Bero Khan
Sunani Buledi through Mr. Noorulah
Gulsher Khan Rind, Advocate.

Respondent The State
through Mr. Ali Haider Saleem, DPG.

Date of hearing 01.02.2021

Date of order **08.02.2021**

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ORDER

Shamsuddin Abbasi, J:- Applicant Abdul Qadir @ Chakar seeks post-arrest bail in Crime No.06 of 2019 registered at Police Station Sanjar Bhatti, District Qambar Shahdadkot for offences punishable under Sections 302, 148, 149, PPC.

2. FIR in this case has been lodged on 19.04.2019 at 1330 hours whereas incident is shown to have taken place on 18.04.2019 at 1230 hours. Complainant Qaim Khan has alleged that he had a dispute with Abdul Qadir @ Chakar over agricultural land in Deh Jehrar, Taluka Shahdadkot, owned by him. On the fateful day he alongwith his father Ahmed Nawaz, brothers Muhammad Rafique, Ghulam Yasin and Muhammad Hanif was present at his land. It was about 12:30 pm when Abdul Qadir @ Chakar alongwith his companions, Bakhshan, Ali Mardan, Naseer Ahmed, Azizullah, Akhtar, Manzoor, armed with pistols, Naimatullah and Ghulam Fareed armed with guns, came there, out of them Abdul Qadir @ Chakar challenged them and made straight fire from his pistol at Muhammad Rafique, which hit on his upper right arm, Akhtar fired from his pistol which hit Ahmed Nawaz on his left hand, Manzoor fired from his pistol which hit above the right knee of Muhammad Rafique, Ali Mardan fired from his pistol which hit Muhammad Rafique at his right leg, Bux Lal fired from pistol which hit on back side of Muhammad Rafique, Naseer Ahmed fired from his pistol and caused injury to Ahmed Nawaz at his left leg and Azizullah fired from his pistol and inflicted injury to Ahmed Nawaz at his left knee. Thereafter, all of them fled away from the scene. As a result of

injuries Muhammad Rafique died at spot while Ahmed Nawaz expired at hospital on next day of the incident.

3. The learned counsel for the applicant has mainly contended that the incident alleged to have taken place on 18.04.2019 whereas the post-mortem report of deceased Muhammad Rafique has been issued after one month of his examination. It is next submitted that the case of the applicant is identical to co-accused Akhtar Sunani and Manzoor Ali, who have already been admitted to bail by this Court vide order dated 20.03.2020. It is also submitted that applicant is complainant in counter FIR, who had sustained fire arm injury on his chest. Per learned counsel, the applicant is entitled to the concession of bail on the rule of consistency and prayed for admission of applicant on post-arrest bail.

4. In contra, the learned D.P.G. has controverted the above submissions of learned counsel for the applicant and submitted that the complainant has well explained the motive in his FIR according to which the applicant alongwith his co-accused came at the scene of offence and caused fire arm injuries to Muhammad Rafique and Ahmed Nawaz, who lost their lives. It is next submitted that specific role of causing fire arm injury has been assigned to applicant, duly supported by the medical evidence. It is also submitted that during incident applicant has also become injured which established his presence at the crime scene. According to DPG, the offence is heinous one and falls within the prohibitory clause of Section 497, Cr.P.C. Thus, the applicant does not entitle to the concession of bail.

5. I have heard the learned counsel for the applicant and the learned D.P.G. for the State and perused the entire record available before me with their able assistance.

6. I do not see any legal force in the contention of learned counsel for the applicant that post-mortem report has been issued by Medical Officer after one month of examination of deceased. At the stage of bail, the Court has to make only tentative assessment and deeper appreciation is not permissible. As to the rule of consistency is concerned, suffice to observe that this Court has granted bail to co-

accused Akhtar Sunani on the ground of inconsistency between ocular version and medical evidence as his role of causing fire arm injury at the hand /palm of deceased Muhammad Rafique was not supported by the medical evidence. Thus, his case was distinguishable from the case of present applicant, who has been assigned role of causing injury to deceased Muhammad Rafique at his right arm, duly supported by the medical evidence. No doubt the case of present applicant is identical to the case of co-accused Manzoor Ali, who was granted bail by this Court while observing that the knee, alleged to be hit with the bullet fired by him, was not a vital part of the body in view of *Miran Bux's* case {PLD 1989 SC 347}. The Hon'ble Supreme Court, in its recent verdict in the case of *Sheqab Muhammad vs. The State* {2020 SCMR 1486}, has discussed the distinction between vital or non-vital part of the body and declined bail to accused by observing as under:-

“3. Arguments that ocular account stands contradicted by medical evidence and in the absence of any independent witness from the public, petitioner's general participation, resulting into an inquiry on a non-vital part of the body, particularly in the absence of repeated fire shot, squarely brings his case within the remit of further probe, are not only beside the mark but also cannot be attended without undertaking an in-depth analysis of the prosecution case, an exercise forbidden by law at bail stage. In a daylight affair, two persons sustained firearm injuries besides the one having endured violence through blunt means and as such requires no public support to drive home the charge; their statements supported by medical examinations of even date, cumulatively bring petitioner's case prima facie within the mischief of section 324 of the Pakistan Penal Code, 1860, hit by statutory prohibition, in view thereof, he cannot be released on bail in the absence of any consideration within the purview of subsection {2} of the Code ibid. Similarly, murderous assault as defined in the section ibid draws no anatomical distinction between vital or non-vital parts of the human body. Once the trigger is pressed and the victim is effectively targeted, “Intention or knowledge” as contemplated by the section ibid is manifested; the course of a bullet is not controlled or steered by assailant's choice nor can he claim any premium for a poor marksmanship. Exercise of discretion by the High Court being well within the bounds of law calls for no interference. Petition fails. Leave declined”.

7. In view of the ratio of case law {supra}, the instant bail application is dismissed. However, taking into account the delay in

the trial and the progress report, submitted by the learned trial Court on 21.07.2020, showing that the charge was framed on 10.10.2020 and since then only examination-in-chief of a single witness has been recorded and his cross-examination is reserved, which shows that the learned trial Court has not taken serious efforts and granted unnecessary adjournments causing delay in the trial, therefore, the learned trial Court, which is also MCTC, is directed to expedite the trial and complete it as quickly as possible by adopting all methods in procuring the attendance of prosecution witnesses and conclude it as early as possible preferably within a period of two months under intimation to this Court through MIT-II. It may also be clarified that the learned trial Court shall not be influenced by the observations made herein above and shall decide the case purely on merits and material made available before it without causing prejudice to either side.

8. This Criminal Bail Application stands disposed of in the foregoing terms.

JUDGE

NAK/PA