

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD.**

**Criminal Bail Application No.S-799 of 2021**

Applicants : Nawab and Dili Jan through Mr. Ahsan Gul Dahri,  
Advocate.

Respondent : The State through Ms. Rameshan Oad, Assistant  
Prosecutor General, Sindh.

Complainant : Talib Hussain and injured Pir Bux (present in person)  
through Mr. Aijaz Ali Jalbani, Advocate.

Date of hearing : **26.11.2021**  
Date of Order : **26.11.2021**

**O R D E R**

**AMJAD ALI SAHITO, J:-** Through instant bail application, the applicants/accused above named seek post arrest bail in Crime No.74 of 2020, under sections 302, 324, 337-A(ii), 337-F(ii), 337-H(ii), 504, 427 P.P.C, registered at P.S Baloo Ja Quba, District Shaheed Benazirabad.

2. The details and particulars of the F.I.R. are already available in the bail application and F.I.R., same could be gathered from the copy of F.I.R. attached with such application, hence needs not to reproduce the same hereunder.

3. Per learned counsel, the applicants/accused are innocent and have falsely been implicated in the case in hand; that main role is assigned to co-accused Bahadur who in fact has allegedly caused fire shot to the deceased Chanesar and mere presence of the applicants/accused has been shown at the place of incident; that if any role is assigned the applicants is that they have given butt blows to injured Pir Bux on his head and other parts of the body and same are general in nature; that no specific role is assigned to the applicants to believe that they were present at the place of incident. He also submits that FIR is delayed for about 32 hours whereas incident took place on 18.12.2020 but the said injured appeared before doctor on 19.12.2020 which is nothing but in order to strengthen the case of complainant. He lastly prayed that applicants/accused may be granted bail.

4. On the other hand learned counsel for complainant as well as learned A.P.G vehemently opposed for grant of bail on the ground that names of the applicants appear in FIR with specific role that they have shared the intention with co-accused as such they are not entitled for concession of bail. Learned counsel for complainant in support of his contentions has placed reliance on the cases reported as Baqir Hussain

and 2 others v. The State and another (2018 YLR Note 78), Jehangir alias Badshah v. The State (1987 SCMR 1154) and Ayaz Ali v. The State (2021 MLD 669).

5. Heard and perused.

6. No doubt the names of applicants/accused appear in FIR but no specific role of causing any injury to the deceased is assigned to them though they were allegedly armed with T.T. Pistols but they did not use the same in commission of offence. Further more if any injury is assigned to them, the same is against injured Pir Bux and no specific injury has been attributed to the applicants/accused. As per learned counsel the alleged incident took place on 18.12.2020 but the injured was appeared before doctor on 19.12.2020 which is nothing but only to strengthen the case. Moreover the FIR is delayed by 32 hours and no plausible explanation has been furnished. In the case of Qurban Ali v. The State (**2017 SCMR 279**) the Honourable Supreme Court of Pakistan had granted bail to the accused who had not been attributed any overt act during the occurrence except the role of raising 'lalkara'. Trial Court in such circumstances had to determine, after recording pro and contra evidence, whether the accused was vicariously liable for the acts of his co-accused. Case against accused was one of further enquiry. In the case of Mumtaz Hussain and 5 others v, The State (**1996 SCMR 1125**), the bail was granted to the accused on the ground that despite being allegedly armed with deadly weapons like rifle, gun and hatchet had only caused simple blunt injuries to some of the prosecution witnesses using the wrong side of their weapons. Question whether the accused in such situation shared common intention with co-accused who had caused death of the deceased needed further inquiry. Applicants/accused are in jail and they are not required for further investigation, their further detention in jail will not improve the case of prosecution. At bail stage only tentative assessment is to be made. Learned counsel for applicants/accused has succeeded to make out a case for grant of bail in view of sub-section (2) of Section 497 Cr.P.C. Resultantly, the instant bail application is allowed and the applicants/accused are enlarged on bail subject to their furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Lac) each and P.R bonds in the like amount to the satisfaction of the trial Court.

Needless to mention here that the observations made herein above are tentative in nature and shall not prejudice the case of either party at the trial.

JUDGE