

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

Criminal Bail Application No.S-861 of 2021

Applicants : Ghulam Mustafa and Arshad through Mr. Mir Naeem Talpur, Advocate.

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

Complainant : Abdul Nasir (present in person) through Mr. Zulqarnain Talpur, Advocate holding brief for Mr. Salahuddin Panhwar, Advocate for complainant.

Date of hearing : **16.12.2021**

Date of Order : **16.12.2021**

O R D E R

AMJAD ALI SAHITO, J:- Through instant bail application, the applicants/accused above named seek their post arrest bail in Crime No.34 of 2021, under sections 302, 324, 506(ii), 337-H(ii), 147, 148, 149, 504 P.P.C, registered at P.S Dilbar Khan Mehar.

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 the role assigned to them are general in nature and no specific role has been assigned. Furthermore, he also produced the copy of bail order passed in Criminal Bail Application No.S-629/2021 wherein the co-accused namely Ali Hassan and Ghulam Murtaza have been granted bail by this court vide order dated 13.09.2021, as such submits that the applicants are entitled for concession of bail on the rule of consistency.

4. On the other hand, Mr. Zulqarnain Talpur, Advocate holds brief for Mr. Salahuddin Panhwar, learned counsel for complainant and requests for adjournment. From perusal of record, it reflects that instant bail application was presented on 28.09.2021 and since then no progress has been made. Record further reflects that even on the last date of hearing counsel for the complainant was not present and brief was held on his behalf hence the request is declined. Today the complainant is present and submits that applicants / accused are very much involved in this case and they are not entitled for concession of bail.

5. Learned A.P.G also opposed for grant of bail.

6. Heard and perused.

7. From perusal of the FIR it appears that in the first portion of FIR the allegation against co-accused Asghar is that he has fired upon Haji Muhammad which hit on his head whereas accused co-Ashraf has fired upon Daud which hit on his right leg and co-accused Ali Hassan and Ghulam Nabi have fired upon Ameer Bux Lund which hit on his ears and after abusing the accused persons ran away. Meanwhile, applicants / accused Ghulam Mustaf son of Asghar Ali having pistol, Ghulam Murtaza son of Asghar Ali (present applicant) having revolver, Arshad son of Akbar (present applicant) having repeater, Munir Ahmed son of Khairuddin having pistol, Mukhtiar son of Abdul Hameed having hatchet threatened to the complainant party not to take the injured persons as such they fired which hit one passerby namely Hafeez son of Maqsood Ali and he fell down. As per medical certificate that injury received by injured was declared as 337-F(iii) PPC which is maximum punishable for three years. At this juncture, learned counsel for the applicants submits that since the injury as pointed out by the Medical Officer is maximum punishable for three years hence the same does not fall within prohibitory clause.

No doubt the names of applicants / accused appear in the FIR but allegations against them are general in nature and it will be decided when the evidence is recorded. 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 instant case the allegations against the applicants / accused are general in nature and no specific role is assigned to them. Applicants / accused are in jail. They are no more required for further investigation and their detention in jail will not improve the case of prosecution. Furthermore, co-accused Ali Hassan and Ghulam Murtaza have been granted bail by this court vide order dated 13.09.2021 on the ground that the allegations against them are general in nature and the injury attributed to them also does not fall within the prohibitory clause of Section 497 Cr.P.C hence on the rule of consistency, the present applicants are also entitled for the same relief. 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 learned trial court.

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

JUDGE

Tufail