

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. B.A. No.S- 446 of 2021

DATE ORDER WITH SIGNATURE OF JUDGE(S)

1. For orders on office objection.
2. For hearing of main case.

01.11.2021

Mr. Amanullah Memon, Advocate for the applicants.

Mr. Nazar Muhammad Memon, Additional Prosecutor General, Sindh.

Mr. Farhad Ali Abro, Advocate for the complainant.

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Amjad Ali Sahito, J: Through instant bail application, applicants Ali Nagar and Naeem seek post-arrest bail in Crime No.34 of 2021, registered at Police Station Hatri, Hyderabad, under section 302, 504 and 34 PPC. Earlier, the bail plea of the applicants was declined by the learned IInd Additional Sessions Judge, Hyderabad, vide order dated 08.05.2021 hence they approached this Court for same relief.

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

3. Learned counsel for the applicants has contended that the applicants are innocent and have falsely been implicated in this case due to previous enmity; that mere presence of the applicants has been shown in the FIR, however, no overact has been pleaded against them, hence they are entitled for bail. In support of his contentions learned counsel for the applicants relied upon the cases of **Sharif Khan vs The State and another** (2021 SCMR 87), **Khiyal Saba and another vs. The State and others** (2020 SCMR 340), **Ihtisham Riaz vs The State and another** (2020 PCr.LJ. Lastly, he submits that in the circumstance, the case of the applicants requires further inquiry and they are entitled for bail.

4. On the other hand, learned counsel for the complainant as well as learned A.P.G appearing for the State vehemently opposed the grant of bail to the applicant on the grounds that at first the applicants stopped the deceased and then co-accused Zakir Mashori had fired upon the deceased as such the

common object is very much applicable in this case, hence the applicants are not entitled for any relief.

5. I have considered the contentions of the learned counsel for the applicant, complainant and learned A.P.G. for the State so also gone through the material available on the record. No doubt the names of the applicants transpired in the FIR but no specific role has been assigned against them, mere presence has been shown at the place of incident without attributing any active role in the commission of alleged offence and it is co-accused Zakir who has allegedly fired upon the deceased and caused his murder. Learned counsel for the applicants has pleaded serious malafides on the part of complainant. In the case of **Sharif Khan vs. The State and another** (2021 SCMR 87)), the bail was recalled by the High Court and the same was impugned before the Honourable Supreme Court and bail cancelling order of the High Court was set aside and the accused was granted bail on the ground that there was no specification of injury attributed to anyone of them. Allegations against the accused were of general in nature. The applicants are in jail since their arrest, they are not required for any further investigation and no useful purpose would be served by keeping them in jail for indefinite period. At bail stage only tentative assessment is to be made and deeper appreciation is not permissible. Tentatively, learned counsel for the applicants has successfully made out their case as of further inquiry as envisaged under sub-section (2) to section 497 Cr.P.C.

6. In view of above, the bail application is allowed and the applicants be released on bail subject to furnishing their solvent surety in the sum of Rs.50,000/- (Fifty thousand) each and P.R Bond in the like amount to the satisfaction of the trial Court.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants on merits.

JUDGE

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