

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Bail Application No.S-622 of 2021

Applicants : Ali Nawaz @ Aloo and Dur Muhammad @
Makhan through Mr. Muhammad Sachal R.
Awan, advocate.

Complainant : Muhammad Umar through Mr. Zahoor
Ahmed Baloch, advocate.

The State : Through Ms. Rameshan Oad, A.P.G, Sindh.

Date of hearing : 13.09.2021.
Date of decision : 20.09.2021.

ORDER

KHADIM HUSSAIN TUNIO, J.-Through instant criminal bail application, the applicants/accused seek their admission to post-arrest bail in Crime No. 118 of 2019, registered under Sections 302, 34, 337-H(ii) and 504 PPC, at P.S. Bhan Saeedabad. Earlier, the applicants had approached the learned 1st Additional Sessions Judge, Kotri with the same plea, but it was denied vide order dated 24.07.2021.

2. Precisely, facts as per the FIR lodged by the complainant Muhammad Umar are that they had a long standing enmity with one Muhammad Iqbal alias Mato and his accomplices since 1999 and due to the same his uncle namely Hassan Ali had been murdered which was witnessed by the father of the complainant namely Muhammad Khan (*deceased*). Such proceedings were pending, but threats were being issued by the accomplices of accused Muhammad Iqbal to withdraw the same. On 11.09.2019, the father of the complainant along with his relatives and the complainant were sitting at their shop in front of High School, Bhan and were approached by the applicants along with co-accused who were boarded on motorcycles. After abusing the complainant party, accused Bashir shot at the complainant's father with a pistol, hitting him on his head. The rest of the accused followed, each shooting with their respective guns and the applicant Ali Nawaz, armed with a DBBL gun, shot at the complainant's father, hitting him on the right side of his head and then the applicant Dur Muhammad fired from his pistol, hitting the complainant's father on his right arm. Then, after firing in the air and abusing the complainant party, the applicants and accused

boarded their motorcycles and left. The complainant found his father on the ground and took him to the Sehwan Hospital where he was pronounced dead. Thereafter, the complainant appeared at the police station to lodge the FIR.

3. Learned counsel for the applicants/accused has argued that the applicants are innocent and have been falsely implicated in the case; that nothing has been recovered from the applicants which connects them with the offence; that all the witnesses are relatives of the complainant hence interested; that the story appears false and fabricated; that during investigation, two of the co-accused were found innocent by the police and the case of the applicants is on similar footing and rule of consistency fully applies to their case; that the post-mortem report was falsely managed; that the FIR is delayed by about 4 and a half hours and the same has not been explained even though police station was only half a kilometer away from the place of incident; that co-accused Abdul Jabbar, Kaloo, Bashir and Farooque were granted bail by this Court; that if the case is fit for bail, mere abscondance does not come in the way of the same. In support of his contentions, he has cited the case law reported as *Muhammad Jamil v. Zahidullah alias Zohaib and 2 others (2018 MLD 768)*.

4. Conversely, learned APG assisted by the counsel for complainant vehemently opposed the grant of bail to the applicants while contending that all the PWs have implicated both the applicants in the commission of offence; that sufficient material is available on the record to connect the applicants with the commission of offence; that the applicants are charged with the commission of an offence carrying capital punishment; that the applicant Ali Nawaz even remained a fugitive from the law and there is apprehension of abscondance again; that the case as set up in the FIR has been supported by the medical evidence as well. Learned counsel for the complainant, in support of their arguments, referred the case titled *Safaidullah Shah and others v. The State and others (2019 PCrLJ Note 117)*.

5. I have heard the learned counsel for the respective parties and have gone through the record. Perusal of record shows that the applicants have been nominated in the promptly lodged FIR for causing injuries to deceased Muhammad Khan on the head and right arm. The parties are known to each other for a long time and have admitted decades old murderous enmity in which the uncle of the complainant was also murdered. The present case does not appear to be one of mistaken identity. As far as 4 hours delay in the

lodging of FIR despite the police station being half a kilometer away is concerned, not only has it been explained by stating that the complainant tried to save his father by taking him to the hospital but it has also been observed by the Hon'ble Apex Court in the case titled *Haji Guloo Khan v. Gul Daraz Khan and others* (1995 SCMR 1765) that benefit of delay in lodging the FIR goes to the accused and **could be** taken into consideration **along with other circumstances**, while deciding the bail application, however such delay alone is never a sufficient ground for grant of bail in a case carrying capital punishment. Even otherwise, it would be quite unreasonable to expect any more promptness in the lodging of FIR since the complainant was busy with the post-mortem of his deceased father. The post-mortem report also confirms the nature of injuries and the locale of theirs on the body of the deceased, confirming the ocular account furnished by the complainant and the prosecution witnesses. Besides this observation, any further observation in terms of entry wounds and exit wounds or distance from which the gun shots were made, as contended by the counsel for the applicants, would be deep appreciation of evidence which is not permissible at bail stage. It is a settled principle of law that the court has to make tentative assessment while deciding the bail application and before recording of the evidence before the trial court, otherwise prejudice may be caused to the case of either party at the trial. In this respect, reliance is placed on the case law reported as *Bilal Khan v. The State through P.G, Punjab and another* (2020 SCMR 937). Motive has also been furnished by the complainant party by disclosing that they had a long standing enmity with the other party. The ocular account furnished in the case has fully implicated the applicants in the commission of the offence to the extent that they shot, with their respective weapons, and killed deceased Muhammad Khan along with the co-accused. All the PWs have supported the version of the complainant as far as the involvement of the applicants is concerned in their 161 Cr.P.C statements. Sufficient material is available on the record to connect the applicants with the commission of the offence which carries punishment up to death. As far as rule of consistency is concerned, the case of the applicants is on a different footing than that of the co-accused who have been granted bail as co-accused Bashir obtained bail on medical grounds whereas co-accused Farooque was found innocent after investigation and his name was placed in column-II which is not the case as far as applicants are concerned. The case of co-accused Abdul Jabbar however is similar to that of applicant Dur Muhammad, however the

observation that the injuries attributed to him were not found in the post-mortem report is not attracted to Dur Muhammad's case as the injury assigned to him is available in the post-mortem as injury No. 6. The co-accused Kaloo, who was also granted bail, was said to be armed with a *danda*, and again that is not the case here. The applicant Ali Nawaz has also remained an absconder in the case involving the murder of the complainant's uncle, therefore there is apprehension that the same could happen again.

6. For what has been discussed above, the applicants have failed to make out a case for grant of bail and therefore the instant bail application being meritless is dismissed.

7. Needless to mention here that the observations made here and above are tentative in nature and shall not in any way affect the merits of case of either party at the trial and / or influence the mind trial Court at the time of deciding the case finally.

J U D G E

Muhammad Danish Steno*