

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Bail Application No.S-690 of 2021

Applicants : Allah Dino, Mazhar, Punhal, Rasool Bux
and Zulfiqar through Mr. Raja Jawad Ali
Sahar, advocate.

Complainant : Allahwarayo through Mr. Abdul Rasool
Abbasi, advocate.

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

Date of hearing : 13.09.2021.
Date of order : 13.09.2021.

ORDER

Through captioned criminal bail application, the applicants seek their admission to post-arrest bail in case pertaining from Crime No.40 of 2021 registered with Police Station Bhan Saheedabad for the offences punishable u/s: 506(2), 147, 148, 149, 504, 114 P.P.C.

2. The allegations, in nutshell, against the applicants are that on 01.06.2021, the applicants in pursuance of their common intention and object, made firing upon the complainant party through various firearms and threatened them of dire consequences, for which the FIR was lodged.

3. Learned counsel for the applicants has argued that the prosecution story is false and fabricated and that the applicants have been falsely involved in the present case; that there is more than 29 hours delay in the lodging of FIR for which no plausible explanation has been provided; that the applicants did not cause any injuries to the complainant party; that the complainant has admitted enmity between them; that the allegations leveled against the applicants are general in nature; that all the PWs are related to the complainant, hence interested and have been set up; and that the applicants are not previous convicts. He lastly prayed for the grant of bail to the applicants.

4. Learned counsel for the complainant while strongly opposing the grant of bail to the applicants argued that the applicants have been named in the FIR with the role of making firing upon the complainant party. Learned APG, while arguing in the same line as argued by counsel for complainant, vehemently opposed the grant of bail to the applicants.

5. I have heard the learned counsel for the parties and perused the record with their able assistance.

6. From the perusal of record, it pertains that the applicants have been named in the FIR with general allegations of making firing upon the complainant party. Enmity has been admitted by both the parties, *prima facie*, the possibility of spreading the net wide by the complainant party so as to falsely entangle as many accused as can-be cannot be ruled out. It is a double-edged sword which cuts both ways. Where, at one instance it may have instigated the accused to allegedly commit the crime, there is a possibility that the complainant, due to that same enmity, falsely implicated the present applicants in the alleged crime. Such a possibility cannot be ruled out. In this regard, I am also fortified with the observation of Hon'ble Supreme Court of Pakistan while dealing with the case of *Subeh Sadiq alias Saboo alias Kalu v. The State and others* (2011 SCMR 1543). As far as the recovery from applicant Punhal is concerned, the same was after two days of his arrest from link road leading from Bhan to Chinni. At this stage, it can safely be said that the same is inconsequential to their case of bail. Similarly, nothing was recovered from rest of the applicants that would connect them with the commission of offence. The question of vicarious liability requires further inquiry and shall be determined by the trial Court. In similar circumstances, the Hon'ble apex Court in cases of *Yaroo v. The State* (2004 SCMR 864), *Muhammad v. The State* (1998 SCMR 454) and *PirBux v. The State* (2012 SCMR 1955) had been pleased to grant bail to the applicants/accused. The investigation of the case has already been finalized and challan has been submitted, thus the physical custody of the applicants is no longer required. During investigation, S. 324 was

dropped and all the other sections including S. 506(2) do not fall within the prohibitory clause of S. 497 Cr.P.C. The complainant also failed to mention the words uttered by the applicants while issuing threats of dire consequences.

7. The recent case before the Hon'ble Apex Court in **Criminal Petition No. 529 of 2021** dated 14.07.2021 titled *Iftikhar Ahmad v. The State* reiterated the long standing principle that grant of bail in offences not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be an exception. The learned counsel for the State and the learned counsel for the complainant could not show this Court any such circumstance or conduct of the applicants that would bring their case under exception to the rule of granting bail in such offences.

8. For what has been discussed herein above, the applicants have made out their case for grant of post-arrest bail and consequential of the above, they were granted bail vide short order dated 13.09.2021. These are the detailed reasons for the same.

9. Needless to mention here that the observations made hereinabove are of tentative nature and shall have no effect upon the trial Court to decide the matter on merits.

JUDGE