

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Misc. Application No. D- 187 of 2018

Date of hearing	Order with signature of Judge
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1. For orders on office objection.
2. For hearing of main case.

Before:

Mr. Justice Salahuddin Panhwar &
Mr. Justice Adnan Iqbal Chaudhry.

29-06-2018

Mr. A. R. Faruq Pirzada Advocate for applicant.

Mr. Abdul Rehman Kolachi, Deputy Prosecutor General a/w Muhammad Aijaz Bhatti, DSP/I.O of crime No. 20 of 2018 of P.S, Mehar-Dadu.

Mr. Qurban Ali Malano Advocate files Vakalatnama on behalf of respondent No.1.

ORDER

Salahuddin Panhwar, J. Through this Crl. Misc. Application, applicant seeks cancellation of pre-arrest bail order dated 24.02.2018, whereby interim pre-arrest bail of respondents No.1&2 in crime No. 20 of 2018 of P.S, Mehar-Dadu for offences under sections 302, 504, 114, 109, 148, 149 PPC r/w section 6/7 ATA, 1997, was confirmed by learned Judge, ATC, Naushehro Feroze.

2. Facts of prosecution case, as set out in the FIR, are that complainant Pervaiz Ahmed (applicant) lodged FIR alleging therein that Mukhtiar Ahmed is his brother, whereas Karamullah Khan Chandio is his father, who was Chairman of U.C Baledi. One Sardar Khan Chandio son of Shabir Ahmed since long used to issue threats to his brother Mukhtiar Ahmed Khan Tamandar in respect of his collusion against him with the help of other Tumandars. He asked him to stop or to face consequences along with Tamandar Council and other family members. Such threats were conveyed through different people at different times. On 17.01.2018 in the morning, complainant along with his father Karamullah Khan, brothers Mukhtiar Ahmed Khan and Qail Hussain, Member District Council, cousins Aijaz Ahmed and Manzoor Ahmed were standing outside their Otaq situated at road leading from police station towards

Fareedabad, when at 09-00 a.m, two vehicles viz. one white Corolla Car No. BFZ-428 and another white Land Cruiser came and stopped, out of which six armed persons identified as 1. Ali Gohar Chandio with KK, 2. Ghulam Murtaza Chandio with repeater, 3. Sikandar Chandio with repeater, 4. Zulfiqar Chandio with repeater, 5. Ghulam Qadir alias Qadu Chandio with repeater and one accused Burhan Chandio was sitting in Land Cruiser and retracted down glass window of the car and instigated other accused that these people insptie of many warnings tried to insurrect against Sardar Khan therefore teach them a lesson and make example for others and kill them, on such instigation of Burhan Khan and at the instance of Sardar Khan, other accused opened fires and created terror among the people and accused Ghulam Qadir alias Qadu made fire of his repeater upon father Karamullah which hit him on his belly, his father grappled accused Ghulam Qadir during which other accused, namely, Ali Gohar with KK and Ghulam Murtaza with repeater fired in order to rescue Ghulam Qadir and one KK fire hit father Karamullah on right side of chest and other KK and repeater fire hit Qadu and both of them fell down, thereafter accused Murtaza fired with his repeater with intention to murder upon brother Mukhtiar Ahmed which hit him on left side of chest and accused Ali Gohar fired with his KK which also hit Mukhtiar Ahmed on his face and he fell down while screaming, thereafter accused Sikandar fired directly with his repeater with intention to murder upon his brother Qabil Hussain which hit him on his right side buttock who also fell down while screaming. Thereafter, all accused fired indiscriminately and raised slogans that whoever will revolt against Sardar he will also meet the same fate and went away in their vehicles towards western side. Then complainant party saw brother Mukhtiar Ahmed who sustained firearm injuries on his face and chest and father Karamullah sustained firearm injuries on his belly and chest and brother Qabil Hussain sustained firearm injuries on his buttock whom they shifted to Taluka Hospital, Mehar where father Karamullah and brother Mukhtiar Ahmed succumbed to injuries and brother Qabil Hussain was referred to Larkana by doctors. After proceedings at hospital, complainant party buried the dead bodies and in the evening received information regarding death of Qabil Hussain at Larkana, whose dead body was shifted to Taluka Hospital, Mehar and after its postmortem, complainant came at P.S and lodged the FIR that accused in collusion with each other

duly armed spread panic and terror and fired indiscriminately at the instance of Sardar Khan and on the instigation of Burhan Khan and have murdered Mukhtiar, Qabil Hussain and Karamullah and terrorized common men who shut their shops and ran away.

3. Learned counsel for applicant/complainant submitted that respondents No.1&2/accused are nominated in the FIR with clear motive for commission of offence and specific role of abetment and instigation to facilitate co-accused to commit the murders of three deceased persons; that plea of alibi of accused Burhan Khan Chandio cannot be considered at this stage, therefore, respondents No.1&2/accused are not entitled to bail. Lastly, he prayed for cancellation of pre-arrest bail granted to the respondents No.1&2/accused by the trial court.

4. Learned DPG for the State while adopting the arguments advanced by learned counsel for applicant did not support the impugned order. In addition, he relied upon cases of Mamars v. The State and others (PLD 2009 SC 385), Muhammad Arshad v. The State (2006 SCMR 966), Shoukar Ilahi v. Javed Iqbal (PLJ 2011 SC 40), and unreported order dated 12.12.2012, passed in CrI.M.A.No.D-620 of 2011.

5. This CrI. Misc. Application was presented on 05.03.2018. Notices were issued and on the next date i.e. 28.03.2018, Mr Athar Abbas Solangi Advocate filed Vakalatnama on behalf of respondents No.1&2. On 12.04.2018, learned APG sought time due to non-availability of police papers. On 03.05.2018, learned counsel for respondents filed reply, however, on 17.05.2018, counsel for applicant was not available but by order dated 26.06.2018 directions were issued with regard to arrest of absconding accused, protection of complainant witnesses and their families as well matter was adjourned with intimation notice to learned counsel for respondents. On 28.06.2018, associate of learned counsel for respondents sought time on the plea that his senior is not well and contended that he will argue this matter today, hence this matter was adjourned for today. Today, Mr. Qurban Ali Malano Advocate files Vakalatnama on behalf of respondent No.1 and seeks time.

6. At this juncture, it would be conducive to refer order dated 24.02.2018 which reads as under:

“Learned counsel for the accused submitted that applicants/accused are innocent and malafidely involved in this case and if they have been sent to jail, it will cause humiliation and harassment to them. He further submitted that applicants/accused are respectable persons there is no cogent evidence to connect them in commission of the offence. He further submitted that there is delay of about 16 hours in lodgment of F.I.R. and possibility of consultation and consideration cannot be ruled out. He further submitted that applicants/accused have joined the investigation and fully cooperated with the I.O. He prayed for confirmation of interim pre arrest bail.

Learned counsel for the complainant submitted that applicants/accused are nominated in F.I.R. with clear motive for commission of offence. He further submitted that plea of alibi of accused Burhan Khan Chandio cannot be considered at this stage. He prayed for cancellation of interim pre arrest bail granted to applicants/accused. Learned APF for the State submitted that investigation has been completed and applicants/accused are found innocent and I.O has recommended for applicants/accused Sardar Khan and Burhan Khan u/s 497 and 169 Cr.P.C respectively. In view of investigation learned APG for the State do not raise objection for confirmation of interim pre-arrest bail granted to applicants/accused.

Heard learned counsel for the applicants/accused, learned APG for the State assisted by learned counsel for the complainant and perused the papers. As per F.I.R. only allegation against applicant/accused Sardar Khan is that he has hatched conspiracy of the offence, but no specific date, time, place and witnesses have been disclosed by the complainant in the F.I.R. The plea of alibi of accused Burahn is verified by the I.O by recording statements of witnesses, where applicant/accused stayed at the time of incident and also collected CDR of cell phone numbers used by applicant/accused Burahn Khan, who also shows his presence at Qasimabad. I.O has recorded statements of three independent witnesses from place of occurrence, they have also not supported the version of complainant regarding presence of applicant/accused and instigation of murder of Karamullah Chandio and others. From the evidence collected by the I.O no objection raised by the APG for the State, applicants/accused have made out their case for further inquiry, as such interim pre arrest bail granted to applicants/accused vide order dated 29-01-2018 stands confirmed on same terms and conditions”

7. Admittedly, before passing of impugned order, one CrI. Transfer Application No.D-54 of 2018 was received by this court, wherein it was pleaded that counsel for accused and presiding officer of trial court are friends. Besides, on same date, learned trial judge accepted police report by showing that both accused persons/respondents No.1&2 are innocent. Even then, interim pre-arrest bail was confirmed. We are conscious of the legal proposition of law that while reversing bail cancellation order it is to be seen that such order is completely against the evidence/material available on record. Admittedly, respondent No.2/accused Burhan has been granted bail on the plea of alibi, whereas, trial court order is not showing reasons with regard to bail grant of respondent No.1/accused Sardar Khan Chandio. However, we have minutely examined record with the assistance of learned counsel for applicant, learned DPG and I.O. It is matter of record that this is a case of three persons murder. Political rivalry is alleged against respondents/accused, who are claiming to be Sardar of Chandia tribe. It is settled principle of law that plea of alibi cannot be considered while deciding bail application, hence powers exercised by trial court while granting pre-arrest bail in favour of respondent No.2/accused Burhan on the plea of alibi is completely against the law, hence impugned order is set-aside to his extent.

8. With regard to respondent No.1/accused Sardar Khan Chandio, it has come on record that there is connection of co-accused persons with respondent No.1/accused Sardar Khan, however, mere connection at this stage can be considered as reasonable ground for grant of bail. Hence, impugned order to his extent is maintained.

9. Accordingly, instant CrI. Misc. Application stands disposed of in above manner.

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