

ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.

Crl: Misc. Application No. S- 228 of 2019

Crl: Misc. Application No. S- 229 of 2019

Crl: Misc. Application No. S- 230 of 2019

Hearing of case

1. For orders on office objection at flag 'A'
2. For hearing of main case

28.10.2019

Ms. Amber Iqbal Advocate for the applicant/complainant in all the matters

Mr. Achar Khan Gabole Advocate for the private respondents in all the matters

Mr. Khalil Ahmed Maitlo, DPG for the State

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Aftab Ahmed Gorar, J: Through this common order, the above three listed Criminal Miscellaneous Applications filed u/s 497(5) Cr.P.C are being disposed of, whereby the applicant/complainant has sought for cancellation of the post-arrest bail granted to the private respondent Touqeer Ahmed and pre-arrest bail to private respondents Pehlwan, Abdul Qadeer and Ghulam Mustafa vide impugned orders dated 01.3.2019 passed by learned 2nd Additional Sessions Judge Ghotki, as they arise out of same case registered as FIR No.96/2018 at Police Station, Adilpur, District Ghotki for offence under Sections 302 & 201 PPC.

2. Learned counsel for the applicant/complainant contends that there is material available to believe that the private respondents including others have committed the murder of the deceased Sajid Ali; that the learned trial Court has based the reason for grant of the bail to the private respondents that there is matrimonial dispute between the parties and delay of two days in lodgment of the FIR; that the deceased was murdered in a brutal manner as his head was slaughtered; that the learned trial Court has deeply considered the material, whereas, at bail stage only tentative assessment is to be made; that although the incident is unseen one, but complainant and PW Deedar

Ali in their 164 Cr.P.C statements recorded before the Magistrate have fully implicated the private respondents. She lastly prayed that the impugned bail grant orders may be recalled and the private respondents may be remanded to jail custody. In support of her contentions, she has relied upon the cases of ***Mst. Qudrat Bibi vs. Muhammad Iqbal and another (2003 S C M R 68)*** and ***Muhammad Adnan vs. The State (2012 Y L R 2056)***.

3. Learned counsel appearing for the private respondents submits that admittedly this is an unseen incident and there is delay of two days in lodgment of the FIR for which no plausible explanation has been furnished by the complainant; that after about 68 days of the incident on 17.01.2019 the 164 Cr.P.C statement of the complainant was recorded in which he has alleged that he regained his previous memories that the private respondents had grudge as such were issuing threats and saying that Sajid Ali would be murdered, hence the applicant/complainant has falsely implicated the private respondents; that the applicant/complainant want to drag the private respondents, who are the members of one and same family in the criminal litigation; that the learned trial Court while considering all the aspects of the case has rightly granted bail to the private respondents and prayed for dismissal of these criminal miscellaneous applications. In support of his contentions, he has relied upon the cases of ***Bashumal vs. The State and another (2007 S C M R 1382)***, ***Noor Muhammad vs. The State (2008 SCMR 1556)***; ***Abid Ali alias Ali vs. The State (2011 S C M R 161)*** and ***Allah Ditta vs. The State (2012 S C M R 184)***.

4. Learned DPG representing the State supported the impugned orders and prays for dismissal of these criminal miscellaneous applications.

5. I have given due consideration to the respective contentions of the learned Counsel for the parties and perused the record. The perusal of the FIR reveals that the alleged incident is unseen one and there is delay of two days in lodgment of the FIR without any plausible explanation. The names of the private respondents are not

appearing in the FIR, whereas, the further statements of complainant Shoukat Ali, PWs Deedar Ali and Nadeem Ahmed were recorded by the police on 17.11.2018 in which they have disclosed the names of two accused persons namely Abdul Jabbar and Abdul Majid. Thereafter on 17.01.2019 after about 68 days of the lodgment of the FIR, the 164 Cr.P.C statements of complainant Shoukat Ali and PW Deedar Ali were recorded by the Magistrate concerned, wherein they have disclosed the name of the private respondents by stating that the applicant/complainant regained his memories that the private respondent Ghulam Mustafa, Pehlwan, Touqeer and Qadeer Ahmed used to threaten the deceased Sajid Ali, as such due to matrimonial dispute they have committed murder of his son deceased Sajid Ali. In such circumstances, the case against the private respondents required further inquiry. It is now settled law that the bail once granted cannot be cancelled unless the order allowing is arbitrary, perverse, capricious and against the material available on record. Furthermore, once the bail is granted then very strong and exceptional grounds would be required for cancelling the same. In this regard reliance is placed in the case of ***Syed Amanullah Shah vs. The State (P L D 1996 SC 241)*** a three member Bench of Honourable Apex Court has held as under;-

“So, we are of the view that where post arrest bail is granted in such cases, then it should not be cancelled as a matter of course or in routine. Once bail is granted by a Court of competent jurisdiction, then very strong and exceptional grounds would be required for cancelling the same. Provisions of Section 497(5) Cr.P.C are not punitive. There is no legal compulsion for cancelling bail granted in cases punishable with death, imprisonment for life or imprisonment for ten years. To deprive a person of his freedom is most serious. It is judiciously recognized that unfortunately there is a tendency to involve the innocents with a guilty. Once an innocent is put under arrest, then he has to remain in jail for considerable time. Normally, it takes two years to conclude the trial in a murder case. Ultimate conviction and incarceration of a guilty person can repair the wrong caused by the mistaken relief of interim bail granted to him but damage to an innocent person caused by arresting him, though ultimately acquitted, would be always beyond repair”.

6. The case-law cited by learned counsel for the applicant/complainant have no direct bearing upon the merits of the case in hand and have distinguishable facts.

7. In view of the above discussion, the impugned bail granted orders passed by trial Court do not call for any interference by this Court. Consequently, these Criminal Miscellaneous Applications having no merits are hereby dismissed.

Judge

ARBROHI