

## IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

**Crl. Bail Application No. S- 145 of 2020 &**  
**Crl. Bail Application No. S- 319 of 2020**

- 1.For orders on office objection.
- 2.For hearing of bail applications

Mr. Ali Ahmed Khan, Advocate for applicants in Crl. B.A. No.S-145/2020.  
Mr. Muhammad Nasir Malik, Advocate for applicant in Crl.B.A.No.S-319/2020  
Mr. Abdul Rasheed Kalwar, Advocate for complainant.  
Mr. Abdul Rehman Kolachi, Deputy P.G for the State.

**Date of Hearing: 26-10-2020**  
**Date of Order: 26-10-2020**

### **ORDER**

**AFTAB AHMED GORAR J.** Through these Crl. Bail Applications, applicants Lal Bux alias Lal, Bakhshoo and Akhtiar Ahmed alias Akhtiar, all by caste Dashti (Crl. B.A.No.S- 145 of 2020) and applicant Noubat Dashti (Crl. B.A.No.S- 319 of 2020) seek post arrest bail in Crime No. 67of 2019, registered at P.S, Khambra-Ghotki under Sections 302, 114, 337F(v), 337A(i), 337F(i) & 34 PPC. Earlier the bail pleas of the applicants were declined by learned Additional Sessions Judge/MCTC, Ubauro vide orders dated 07.03.2020, 13.03.2020, and 14.04.2020 respectively.

2. The facts of the prosecution case, as set-out in the FIR, are that complainant Ghulam Nabi lodged above FIR alleging therein that Imam Bux S/O Cholu Dashti, aged about 66 years was his father and Saleem Dashti and others are their relatives with whom they had matrimonial dispute. On 29.11.2019, the complainant with his father Imam Bux Dashti, brother Ghulam Sarwar Dashti and his uncle Mir Hazar @ Mir Mohammad Dashti were going by foot towards Mureed Shaikh and when at 1400 hours, they reached at Machko road Ara machine of Mato Gopang, they saw six persons standing at the road, who were identified as (1) Saleem S/O Noubat, (2)

Akhthar S/O Lal both armed with iron pipes, (3) Ismail S/O Noubat, (4) Noubat S/O Allah Dino, (5) Lal S/O Razi, and (6) Bakhshoo S/O Razi all Dashti by caste armed with lathis, who came in front of the complainant party. Accused Noubat Dashti instigated other accused persons to commit murder of Imam Bux Dashti and others over matrimonial dispute. On such instigation, accused Saleem Dashti caused iron pipe blows to Imam Bux at his head. Accused Akhtiar caused him injuries at his left arm and elbow. Accused Bakhshoo Dashti caused lathi blow to his uncle Mir Hazar @ Mir Mohammad. Accused Ismail caused lathi blow to the complainant at his head. Accused Lal Bux Dashti caused him lathi blow at his right arm and accused Noubat Dashti caused lathi blows at his left hand. They started bleeding, whereas his father became semi-conscious. Then, they beseeched the accused in the name of Almighty Allah and Rasool (Peace Be Upon Him). Thereafter, the accused went away towards their houses. The complainant party came to PS where they obtained letters for treatment and came at Taluka Hospital Ubauro. Due to serious condition of his father and uncle, they were referred to Civil Hospital Sukkur, wherefrom they referred to Sajid Surgical Rahimyar Khan where his father succumbed to the injuries at 10:00 hours. The dead body was brought at Taluka Hospital, where its post-mortem was conducted and the complainant while leaving the witnesses at the dead body appeared at the PS and lodged the above FIR.

3. Learned counsel appearing on behalf of the applicants argued that the applicants are innocent and have nothing to do with the alleged offence as they have falsely been implicated in this case due to admitted enmity; that there is inordinate delay of six days in registration of FIR without plausible explanation, which gives presumption of false implication of applicants after consultation and deliberation; that the injured appeared at the PS to receive letters for treatment, but at that time neither the incident was reported nor

the names of the accused persons were disclosed; that during course of investigation, the DSP, Complaint Cell kept the names of applicants Akhtiar, Bakhshoo and Lal Bux in column No. 2 of charge-sheet, but the learned Magistrate took cognizance against them; that all the witnesses are close relatives of the complainant, hence they are interested. Lastly, they prayed for release of applicants on bail as the case against applicants calls for further enquiry, as envisaged under Sub-Section (2) of Section 497 Cr.P.C. In support of their arguments, learned counsel placed reliance upon the cases of *Attaullah v. The State* **(1999 SCMR 1320)**, *Muhammad Akram v. The State* **(2004 YLR 137)**, *Mureed v. The State* **(1985 PCr.LJ 265)**, *Ghulam Yaseen v. The State* **(2010 PCr.LJ 456)**, *Nooruddin v. The State* **(2005 MLD 1267)**, *Shah Baig v. The State* **(2017 MLD 2072)**, *Amanat v. The State* **(1998 MLD 1603)** and an unreported order dated 01.10.2020, passed by Circuit Court, Larkana in Crl.B.A.No.S- 314 of 2020.

4. On the other hand, learned counsel for the complainant opposed the grant of bail to the applicants on the ground that names of applicants transpire in the FIR with specific role of committing murder of father of complainant and causing injuries to the complainant and his witnesses; that all the applicants are equally responsible for the offence irrespective of the fact that whether they played major or minor role in the offence; that the incident occurred in broad daylight, as such no question of mistaken identity arises; that the delay in registration of FIR has plausibly been explained in FIR itself; that deeper appreciation of evidence is not required at this stage and causing lesser injuries is not a ground for bail. Lastly, he prayed for dismissal of instant bail applications. He relied upon the case of *Habibullah Jan v. The State* **(2020 SCMR 1278)**, *Gulzar Khoso v. The State* **(2006 PCr.LJ 1984)**, *Muhammad Imran v. The State* **(2008 PCr.LJ 1555)** and *Abdul Rehman v. Ali Sher* **(2000 PCr.LJ 33)**.

5. Learned Deputy P.G for the State while adopting the arguments advanced by learned counsel for the complainant opposed the grant of bail to the applicants.

6. Heard learned counsel for the parties and perused the material available on record. Perusal of FIR reflects that on the instigation of applicant Noubat, applicants Lal Bux alias Lal and Bakhshoo caused injuries to injured persons, while role attributed to applicant Akhtiar Ahmed is that of causing injuries to deceased at his left arm and elbow. The version of the complainant recorded in the FIR is fully supported by the PWs in their statements recorded under Section 161 Cr.P.C so also corroborated by medical certificate, recovery of crime weapons and lathies from the possession of the applicants. It is well settled principle of law that at bail stage, deeper appreciation of evidence is not required.

7. No doubt the I.O has let off the present applicants Akhtiar, Bakhshoo and Lal Bux by placing their names in Column No.2 of the charge-sheet, but the opinion of police is not binding upon the Court, as such the learned Magistrate took the cognizance of the offence. No explanation whatsoever has been rendered to justify the presence of the applicants at the place of occurrence which leads to a tentative view that the applicants shared the common intention to commit the offence, hence the applicants are vicariously liable for the offence irrespective of the fact that they have caused injuries to the injured PWs, but it shows that they while sharing common intention have actively participated in the offence. The delay in lodgement of FIR has properly been explained by the complainant as he was busy in treatment of his father in order to save his life. Insofar as the enmity is concerned, it is settled law that enmity is double-edged which cuts at the both end and it can be observed that due to enmity offences are committed.

Prima-facie, there is sufficient material against the applicants to connect them with the commission of offence. I am fortified by case law relied upon by learned counsel for the complainant, wherein on identical and similar circumstances bail has been refused to the accused therein.

8. In view of above discussion, it can be safely said that there are reasonable grounds to believe that the applicants have played their role by committing the murder of father of complainant so also causing serious injuries to the injured persons by sharing their common intention in the commission of crime falling under the prohibitory clause of Section 497(1) Cr.P.C disentitling the applicants for the grant of bail on the ground of further enquiry.

9. For what has been discussed above, I am of the considered opinion that applicants have failed to make out a case for grant of bail at this stage. Consequently, listed both Crl. Bail Applications **are dismissed**. There is no cavil to the proposition laid down in the case law relied upon by learned counsel for applicants, but it has no relevancy to the facts and circumstances of the case in hand. Since the trial of the case is pending before learned Model Criminal Trial Court, and it has been pointed out that schedule has been announced for conclusion of trial, therefore, it is expected that trial is concluded as per schedule.

10. Before parting with this order, it is directed that any observations recorded in this order, being purely tentative in nature, should in no way prejudice the proceedings before the learned trial Court where the case be decided strictly on its own merits after recording evidence.

**J U D G E**