

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Cr. B.A. No. S- 71 of 2021

Applicant: Shunaid Akbar s/o Akbar Ali
Through Mr. Muhammad Hashim
Leghari, Advocate.

Complainant: Muhammad Waseem, through
Mr. Afzal Karim, Advocate.

The State: Through Ms. Sobia Bhatti, A.P.G.

Date of hearing: 14-06-2021
Date of Decision: 14-06-2021

ORDER

Zulfiqar Ali Sangi, J: Through this Criminal Bail Application under Section 497 Cr.P.C., applicant Shunaid Akbar seeks post arrest bail in Crime No. 122 of 2020 registered at police station Satellite Town, Mirpurkhas under Section 302 & 34 PPC.

2. Brief facts of the prosecution case as per FIR registered by Complainant Muhammad Waseem on 26.10.2020 at above police station are that he is serving in Pak Army and posted at Sialkot, on 22.10.2020 he received a telephone call from his brother Muhammad Farooque who informed him that their brother Shahrukh who was running a General Store at Power House Walket Town Road Mirpurkhas had some monetary dispute with accused Shunaid Ali (applicant) and co-accused Raheel Abbas. On that day both Shunaid and Raheel came on motorcycle at the shop of their brother asked him that they will arrange his payment at Bus Terminal, and asked him to go with them, upon which Shahrukh sat with Raheel on his motorcycle and Muhammad Farooque and Muhammad Yaqoob followed them on their motorcycle, when they reached at Ring Road

Railway crossing Shunaid and Raheel stopped motorcycle and also stopped them and taken out pistols from the folds of their shalwars and aimed at them and asked them not to come near to them, due to fear they stand there. Thereafter Raheel asked his brother Shahrukh that since he has disgraced them and complained to the notables therefore they will kill him and hence fired from his pistol which hit Shahrukh at his chest and died. Subsequently, both accused Shunaid and co-accused Raheel went away. Such FIR was registered.

3. After registration of FIR both the accused persons were arrested to face trial. During trial applicant moved bail application before learned Additional Sessions Judge-I / MCTC Mirpurkhas which was dismissed vide order dated 16.12.2020, hence he has approached this court for grant of bail.

4. Learned counsel for the applicant has sought bail mainly on the ground that there is four days unexplained delay in lodging the FIR; hence consultation and due deliberation cannot be ruled out; that in the FIR mere role of applicant is of instigation to co-accused; that the news of murder of deceased Shahrukh was published in leading newspapers according to which he committed suicide due to annoyance and dispute with his family members, hence in order to save their skin the family members of deceased concocted a false story to implicate the present applicant, hence the matter needs further inquiry; that monetary dispute between the applicant and deceased is admitted by the Complainant in the FIR, hence roping of applicant in false case cannot be ruled out; that the place of incident is thickly populated area but even then no private witness has been cited as mashir; that the investigation has been completed and applicant is no

more required for further investigation, hence the applicant be enlarged on bail.

5. Learned A.P.G. assisted by learned counsel for Complainant has vehemently opposed the grant of bail to the applicant on the ground that the applicant has taken active part in facilitating the co-accused who had caused murder of deceased, hence he is vicariously liable for the same offence.

6. I have heard arguments of learned counsel for the applicant, learned counsel for the complainant and learned A.P.G for the state and have go through the material available on the record with their able assistance.

7. The role against the present applicant is that firstly he along with co-accused Raheel came at the shop of deceased where from they took the deceased with them on motorcycle and the applicant on show of weapon kept the witnesses away from deceased who was murdered by co-accused Raheel, the deceased had dispute with both the accused who took him from his shop. During investigation the police recovered T.T. Pistol and 02 magazines from co-accused Raheel on his pointation. Applicant actively facilitated the co-accused for the murder of deceased. The Honourable Supreme Court in the case reported as **Sh. Muhammad Abid v. The State (2011 SCMR 1148)**, while dealing with the issue of common intention was pleased to hold that once it is found that the accused persons had common intention to commit the crime, it is immaterial as to what part was played by whom as law as to vicarious liability is that those who stand together, must fall together. The question what injuries were inflicted by a particular accused in cases to which section 34, P.P.C. applies is immaterial, the principle underlying the section

being that where two or more persons acted with a common intention each is liable for the act committed as if it had been done by him alone. Reliance is also placed on the case of **Sidra Abbas V. The State and another (2020 SCMR 2089)**, wherein Supreme Court has cancelled the bail granted by this court at principal seat and in that case allegation against the applicant was that of presence at the place of incident with co-accused.

8. For the above reasons, the instant Criminal Bail Application is dismissed. However, the trial court is directed to decide the case as early as possible and preferably within a period of four months and report compliance to this court through Additional Registrar of this Court.

JUDGE

karar_hussain/PS*