

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Criminal Bail Application No.S-203 of 2021

Applicant: Ghulam Hyder son of Shafi Muhammad
by caste Kaloi, through Syed Tarique
Ahmed Shah, Advocate.

Complainant: None present.

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

Date of hearing: 28.06.2021
Date of decision: 28.06.2021

ORDER

Zulfiqar Ali Sangi, J: The applicant Ghulam Hyder son of Shafi Muhammad seeks his post arrest bail in Crime No.127 of 2020 registered at P.S B-Section Tando Allahyar for offence u/ss 302, 201, 147, 148, 149 PPC. Earlier his bail application was declined by learned Ist Additional Sessions Judge, Tando Allahyar vide order dated 27.02.2021.

2. As per FIR registered by Mukhtiar Ali on 11.12.2020, the allegation against the present applicant is that he along with other accused caught hold the deceased and co-accused Azhar fired from his pistol on forehead of deceased Niaz Ali.

3. Learned counsel for the applicant submitted that there is general role against the present applicant and others for holding the deceased and he has not fired on deceased; that incident was of night time and the identification of applicant at the place of incident is doubtful; that the bail application was rejected by the learned trial Court on the ground that applicant has shared common intention, for which there is no evidence against the present applicant. In support of his contentions he has relied upon the case laws reported in 1995 SCMR 310, 2008 YLR [Karachi] 72, 2009 MLD [Karachi] 779, 2020 SCMR 956, 2020 YLR Note-40 and 2020 YLR Note 40.

4. Learned A.P.G for the State opposed the grant of bail and submitted that the applicant is nominated with specific role; that the FIR was registered promptly; that 9mm pistol was recovered from the applicant and FSL report is in positive in that respect. She requested that bail application of applicant may be dismissed.

5. I have heard arguments of learned counsel for the applicant, learned A.P.G for the State and have gone through the material available on the record with their able assistance.

6. This incident took place on 11.12.2020 at 0130 hours at night time and the FIR was registered on the same day at 1200 hours with the delay of about 10 ½ hours; however, the same is explained in FIR by the complainant. The applicant is nominated in the FIR with the role that he caught hold the deceased and facilitated co-accused, who after the act of present applicant fired upon the deceased, resulting his death. The applicant was arrested on 14.12.2020 and one 9mm pistol was recovered from his possession. Record reflects that the pistol and the empties recovered from the place of incident were sent for FSL report, which is in positive. Perusal of record shows that apparently 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 (20011 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 PPC 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.

7. 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. The facts and circumstances of the case laws so relied upon by learned counsel for the applicant are distinguishable from the present case.

8. The observations made herein above are tentative in nature and shall not prejudice the case of either party on merits at the trial.

JUDGE

Ahmed Pa.