

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Criminal Bail Applications No. 355 & 1751 of 2021

Applicant in : Muhammad Saleem s/o. Ahmed, through  
Cr. Bail No. 355 of 2021 Mr. Mehmood A. Qureshi, advocate

Applicant in : Hamdan s/o. Abdul Jabbar, through  
Cr. Bail No. 1751 of 2021 M/s. Arshad Mahmood and Chaudhry  
Muhammad Shahzad Arshad, advocates

Respondent : The State, through Mr. Faheem Hussain  
Panhwar, D.P.G.

Complainant : Waqas s/o. Muhammad Ayub, through  
Mr. Rana Khalid Hussain, advocate  
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Date of hearing : 31.03.2022  
Date of order : 31.03.2022  
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**ORDER**

**ZAFAR AHMED RAJPUT, J:-** By this common order, I intend to dispose of above listed both bail applications as the same, being arisen out of F.I.R. No. No. 286/2020 registered at P.S. Kalakot, Karachi under sections 302/324/34, P.P.C, have been heard by me together.

2. Applicant/accused Muhammad Saleem s/o Ahmed, through Criminal Bail Applications No. 355 of 2021, seeks pre-arrest bail in aforementioned crime. His earlier application for grant of same concession bearing No. 485 of 2021 was dismissed by the learned Additional Sessions Judge-X, Karachi-South vide order, dated 24.02.2021. He was admitted to interim pre-arrest bail by this Court in the instant Cr. Bail Application vide order, dated 02.03.2021, and now the same is fixed for confirmation of interim bail or otherwise. While the applicant/accused Hamdan s/o Abdul Jabbar, by means of Criminal Bail Applications No. 1751 of 2021, seeks post-arrest bail in aforementioned crime. His earlier application for the grant of same relief bearing No. 522 of 2021 was dismissed by the said learned Additional Sessions Judge, vide order dated 24.02.2021.

3. It is alleged that, on 15.10.2020 at 8:00 p.m. at plot No. LY-50, Old Survey No. R-14/13, Baloch Go-down, Main Chakiwara Road, Adam Tea, Opposite Al-Fareed Garage, Kalakot, Lyari, Karachi, the applicants and co-accused Abdul Jabbar, his sons Maktoom, Muslim and Liaqat Jallab, in furtherance of their common intention, on a dispute over a plot, abused the complainant, his brother Owais, cousin Majid and Muhammad Amin alias Babul and on the instigation of Abdul Jabbar, Maktoom committed *qatl-amd* of Owais by causing firearm injury on his abdomen, while other accused persons fired on complainant party with their pistols, causing injury to complainant on his right buttock, so also co-accused Liaqat Jallab received a bullet injury on his leg, for that the accused persons were booked in the aforesaid F.I.R.

4. Learned counsel for the applicant Muhammad Saleem has contended that the applicant is innocent and has falsely been implicated in this case with mala fide intention and ulterior motives; that no specific injury has been attributed to applicant; that no direct or indirect evidence is available with the prosecution against the applicant; that the complainant intends to usurp a plot of the co-accused Abdul Jabbar; therefore, he has involved his all male family members including the applicant in this false case; that the ballistic reports of the empties do not support the case as narrated by the complainant; that it is a fit case of further inquiry.

5. Learned counsel for applicant Hamdan while adopting the arguments of learned counsel for the applicant Muhammad Saleem has added that I.O. conducted the investigation with partiality and did not give weight to counter version; that the defence witnesses filed a Cr. Misc. Application No. 1714/2020, under section 22-A, Cr.P.C. before the concerned Ex. officio Justice of Peace, which was allowed vide order dated 14.12.2020 by directing the police to record the statements of the defence witnesses; that the F.I.R. was registered after delay

of 22 hours without any plausible explanation; that there is an admitted enmity between the parties; hence, false implication of the applicant cannot be ruled out; that the postmortem examination of the deceased was not done; therefore, the cause of death could not be ascertained; that nothing incriminating has been recovered from applicant; hence, he is entitled to the concession of bail.

5. Conversely, learned counsel for the complainant as well as learned D.P.G. have opposed these applications on the ground that the applicants are nominated in the F.I.R. by name with specific allegation and all the witnesses have fully implicated them in their statements recorded under section 161 Cr.P.C.; that sufficient evidence is available with the prosecution to connect the applicants with the commission of alleged offence; therefore, they are not entitled to the concession of bail.

6. I have given due consideration to the arguments advanced by both the parties and also perused the material available on record.

7. As per F.I.R., the complainant's father Muhammad Ayub had business partnership with co-accused Abdul Jabbar and they had a dispute over a plot, who called them for meeting; however, since his father was not feeling well, he sent him for such purpose, who on the fateful day went to him alongwith his brother Owais, cousin Majid and one friend of his father, namely, Muhammad Amin @ Babul. Abdul Jabbar, his sons Maktoom, Muslim, Hamdan, his brother-in-law Saleem and Liaqat Jallab were sitting there; the negotiation turned into bitterness between the parties and then the alleged incident took place.

8. It appears from the perusal of the record that in the instant case co-accused Abdul Jabbar has been implicated with his three sons and brother-in-law. Dispute over a plot between the parties is an admitted fact. There is delay of 22 hours in lodging of F.I.R.; hence, the deliberation and consultation to implicate all the family members of co-accused Abdul Jabbar cannot be ruled out. It further

appears that the specific role of causing fatal shot to deceased has been assigned to co-accused Maktoom, while allegation against the applicants is of general nature. The complainant has sustained injury on his right buttock for that he has not specifically implicated any of the accused persons. Police recovered from the spot four empties and as per reports of the Forensic Division, all the four empties were fired from the same weapon. Hence, the case of the prosecution against the applicants falls within the scope of further inquiry.

9. Accordingly, applicant Hamdan s/o. Abdul Jabbar is admitted to post-arrest bail subject to furnishing by him solvent surety in the sum of Rs.100,000/- (Rupees One Lac only) and P.R. Bond in the like amount to the satisfaction of the trial Court, while interim pre-arrest bail granted to applicant Muhammad Saleem s/o. Ahmed vide order dated 02.03.2021 is confirmed on the same terms and conditions.

10. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicants on merits. In case applicant(s) misuses the concession of bail in any manner, it would be open for the trial Court to cancel his bail after issuing him the requisite notice.

Above are the reasons of my short order, dated 31.03.2022

JUDGE

*Athar Zai*