

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Cr. Bail. Appln. No.S – 776 of 2020

Date	Order with Signature of Hon'ble Judge
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For hearing of bail application

1. For orders on office objection at flag 'A'
2. For hearing of bail application

08.03.2021

Mr. Ubedullah Ghoto Advocate for the Applicant/accused
 Mr. Anwer Ali Lohar Advocate for complainant
 Mr. Khalil Ahmed Metlo, DPG for the State

ORDER

Aftab Ahmed Gorar, J:- Through instant Criminal Bail Application, the applicant/accused Sadam Hussain S/o Abdul Qadir, Sanghar, seeks post-arrest bail in case / crime arising out of FIR No.187 of 2019 registered at Police Station 'A' Section, District Ghotki for offences punishable under Sections 302, 324, 114, 147, 148, 149 PPC.

2. Precisely stated the facts of the prosecution case are that on 17.08.2019 at 1530 hours, complainant Shakeel Ahmed Sangar lodged his FIR at Police Station 'A' Section Ghotki, stating therein that on 16.08.2019 at about 1800 hours, he along with his cousin Jameel Ahmed, maternal-cousin Ali Nawaz, maternal-uncle Muhammad Ayoub were standing in front of Otaq of his cousin Muneer Ahmed, there came accused Amir Bux with Kalashnikov, Muhammad Qasim with Pistol, Abdul Karim, Naeem, Gul Bahar, Barkat with pistols, Hazoor Bux and Manzoor with Kalashnikov,

Sakhawat with Pistol, Sadam (present applicant) with Kalashnikov), Fayaz with hatchet, Mushtaque with pistol. On coming, they started hurling abuses, on which Jameel Ahmed asked them to be gentlemen. Out of them, accused Mushtaque and Barkat took out pistols and overpowered the complainant, whereas, accused Amir Bux instigated other accused not to spare them (complainant party). Accused Sadam made direct fire from his Kalashnikov upon Jameel Ahmed which hit on his right thigh which went through and through; accused Qasim made direct fire of pistol which hit Ali Nawaz on his right arm; accused Hazoor Bux caused Kalashnikov Butt blow on the head of Muhammad Ayoub, who collapsed on the ground. On the cries, neighbourers Allah Diwayo Imran, Khalid Hussain, Abdul Hameed also came there; accused Naeem with intention of murder caused Pistol butt blow to Allah Diwayo on his head; accused Gul Bahar caused pistol butt blow to Imran on his head; accused Sakhawat caused pistol butt blow to Khalid Hussain on his head; accused Fayaz caused hatchet blow to Abdul Hameed on his left hand palm; accused Abdul Karim and Manzoor also overpowered the injured. It is alleged that in the incident, the accused party also sustained fire-arm injuries at the hands of their companions, thereafter, the accused party took away their injured companions and escaped away. Thereafter the injured persons were shifted to hospital, but one of the injured Jameel Ahmed succumbed to the injuries, hence the FIR was lodged.

3. The applicant/accused on having been refused post-arrest bail by the Court of learned 1st Additional Sessions Judge, Ghotki vide order dated

01.12.2020, seeks the same from this Court by way of instant criminal bail application.

4. It is contended by learned counsel that the applicant/accused is innocent and has been falsely implicated by the complainant in the instant case; that there was dispute between the parties over the rotation of water; that there is delay of more than 2100 hours in lodgment of the FIR without any plausible explanation; that all the P.Ws are related, inter se, hence they are setup; that the fire made by the applicant/accused is allegedly hit on the right thigh of leg, which is non-vital part of the body; that there is counter-blast of the present incident as the FIR No.194/2019 which was lodged by the one Ayaz Ahmed, the brother of present applicant; that the co-accused Abdul Karim, Gul Bahar, Hazoor Bux and Fayaz Ahmed have been granted post-arrest bail this Court vide order dated 26.10.2020; that the guilt of the applicant/accused requires further inquiry. He lastly prayed for grant of post-arrest bail to the applicant/accused.

5. Learned counsel for the complainant as well as learned Deputy Prosecutor General for the State prayed for dismissal of the bail application by contending that the complainant in his FIR has specifically named the applicant/accused with active role that he duly armed with Kalashnikov along with co-accused came at the place of incident and on the instigation of co-accused Amir Bux, the applicant/accused made direct fire upon deceased Jameel Ahmed, which hit on his right leg thigh, as a result thereof who died.

6. I have considered the arguments advanced by learned counsel for the applicant/accused, learned counsel for complainant and learned Deputy Prosecutor General for the State and have also examined the available record. Admittedly, the applicant/accused is nominated in the FIR with specific role that he being armed with Kalashnikov came at the place of incident along with co-accused and on instigation of co-accused Amir Bux made direct fire from his Kalashnikov which hit on the right thigh of Jameel Ahmed, who died as a result of the single firearm injury. The eyewitnesses in their 161 Cr.P.C statements have supported the version of the complainant as setout in the FIR, whereas, the ocular version furnished by the complainant and eyewitnesses is also supported by the medical evidence. The offence with which the applicant/accused has been charged entails capital punishment and falls within the prohibitory clause of Section 497 Cr.P.C. There is recovery of crime weapon *i.e.* unlicensed Kalashnikov from the possession of the present applicant/accused. Further there is another plea taken by learned counsel for the applicant/accused that there is counterblast of the present incident *i.e.* Crime No.194/2019 lodged by one Ayaz Ali, the real brother of co-accused Sakhawat at the same police station, suffice is to say that the plea of counterblast cannot be considered at this preliminary stage before commencement of the trial. The role of the co-accused Abdul Karim, Gul Bahar, Hazoor Bux and Fayaz Ahmed, who have been granted post-arrest bail by this Court in Criminal Bail Application No.S-393/2020 vide order dated 26.10.2020, cannot be equated with the role assigned to the present applicant/accused. In the circumstances, the

applicant/accused has not been able to make-out a case of further inquiry entitling him to grant of bail. Consequently, the instant criminal bail application is **dismissed**.

7. The observations made herein above are tentative in nature and will not prejudice the case of either party at trial.

Judge

ARBROHI