

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Application No. S – 648 of 2020

Date	Order with signature of Judge
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For hearing of bail application

30.11.2020

Syed Murad Ali Shah Advocate for the Applicant/accused
 Mr. Javed Miandad Chandio Advocate for complainant
 Mr. Shafi Muhammad Mahar, DPG for the State

ORDER

Aftab Ahmed Gorar, J- Through instant Criminal Bail Application, the applicant/accused Abdul Khalique S/o Muhammad Bachal Mari, seeks post-arrest bail in Crime No.25/2019 registered at Police Station, Ahmedpur, for offences punishable under Sections 302, 114, 147, 148 and 149 PPC.

2. The facts of the prosecution case, in brief are that on 08.05.2019 complainant Muhammad Yakoob Mari lodged the FIR at police Station, Ahmedpur, stating therein that Abdul Khalique Mari and party were annoyed with him over the partition of agricultural land, whereas, on the day of incident, he along with his brother Fazal Muhammad, cousin Ghulamullah, nephew Mumtaz were going to their lands, when it was 7:00 am, when they reached near the land of Abdul Khalique near village Yar Muhammad Mari, they saw and identified accused each one Ali Muhammad with Pistol, Ali Dino with hatchet, Ali Khan with lathi, Abdul Razak with Spade, Abdul Khalique empty handed (present applicant). Out of them, accused Abdul Khalique instigated his accomplices not to spare them, on his instigation, accused Ali Muhammad fired direct pistol shot upon his brother Fazal Muhammad hit him on his face, who raised cries and fell-down on the earth; accused Ali Dino caused sharp sided hatchet

blow to Fazal Muhammad on his left side forehead; accused Abdul Razak caused sharp sided Spade blow to Fazal Muhammad on left eyebrow and left forehead region, they raised cries, which attracted the area people, who rushed to the place of incident, hence on seeing them coming, all the accused persons escaped towards eastern side in the date palm gardens, hence such FIR was registered, as stated above.

3. The applicant on having been refused post-arrest bail by the Court of learned 3rd. Additional Sessions Judge, Khairpur vide order dated 17.06.2020 hence he has preferred the instant bail application.

4. It is contended by learned counsel for the applicant/accused that the applicant/accused is innocent and has falsely been implicated in this case due to enmity over the landed property; that as per FIR the role of instigation and mere presence is attributed to the applicant/accused but no active role has been attributed to applicant/accused in the commission of the alleged offence; that all the P.Ws are related, inter se, hence they are setup, hence their version cannot be believed as trustworthy and confidence inspiring; that though the incident had taken place in the broad day hours in thickly populated area, but even the no independent person from the locality has been associated as witnesses; that the applicant/accused is in jail since arrest and case has been challaned, no fruitful result will be achieved to keep the applicant/accused in jail for indefinite period, therefore, he prayed for grant of bail to the applicant/accused. In support of his contentions, he has relied upon the case of ***Attaullah and 03 others vs. The State and another (1999 SCMR 1320)***.

5. Learned counsel for the complainant has opposed for grant of bail to the applicant/accused by contending that the applicant is

nominated in the FIR with role that he has instigated the co-accused, Ali Muhammad, Ali Dino and Abdul Razak, who have brutally murdered the deceased Fazal Muhammad by causing him pistol fire shot, hatchet and injuries on his face, therefore, he is vicariously liable, hence does not deserve for concession of bail. In support of his contentions, he has relied upon the cases of ***Zarin Khan v. The State (1980 SCMR 305)***; ***Muhammad Arshad v. The State and another (1997 SCMR 1275)***; ***Haji Jaro and 2 others v. The State (2003 P Cr. L J 383)***; ***Shahabuddin Chaudhry and another v. The State (PLD 2004 Supreme Court 785)***; ***Ghulam Raza v. Khuda Bux and another (2005 SCMR 1904)*** ***Noor-ul-Haq vs. The State (2007 YLR 838)*** and ***Mamaras v. The State and others (PLD 2009 Supreme Court 385)***.

6. Learned DPG for the State has recorded no objection to grant of bail to the applicant/accused by contending that the role of instigation and mere presence has been attributed to the applicant/accused in the commission of offence.

7. I have heard the learned counsel for the parties and perused the record. As per FIR, it is alleged that co-accused Ali Muhammad, Ali Dino and Abdul Razak, have committed the murder of deceased Fazal Muhammad by causing him pistol fire shot, hatchet and Spade injuries on his face, resultantly, who died, whereas, the role of instigation and mere presence being empty handed is attributed to the present applicant/accused and he is not alleged to have caused any injury either to the deceased or the complainant party. At the most his case falls under the scope of vicarious liability, which is to be determined by the trial Court after recording evidence. I am fortified by the case of ***Tariq Zia vs. The State reported as (2003 SCMR 958)***, wherein the Hon'ble Supreme Court of Pakistan on the identical and similar circumstances has been pleased to grant bail to the accused having been attributed the role of raising lalkara being empty handed

and had not played any active role in the commission of the offence. In these circumstances the case against applicant/accused calls for further enquiry in terms of Sub-section (2) of Section 497 Cr.P.C. Accordingly, the instant bail application is allowed and applicant/accused is admitted to post-arrest bail subject to furnishing solvent surety in the sum of ***Rs.300000/- (Three lac)*** and PR bond in the like amount to the satisfaction of learned trial Court. The case law relied upon by learned counsel for the complainant being on distinguishable facts and circumstance, cannot be relied upon.

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

Judge

ARBROHI