

**THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Crl. Bail Application No.S-1126 of 2022

DATE ORDER WITH SIGNATURE OF JUDGE

For orders on office objections.
For hearing of main case.

28.11.2022.

Mian Taj Muhammad Keerio, Mr. Zaheer Ali Soomro and Mr. Peeral Majeedano advocates for applicants.

Mr. Abdul Waheed Bijarani Assistant Prosecutor General.
Mr. Pervez Akhtar Talpur advocate for complainant.
Complainant is present in person.

ORDER

MUHAMMAD IQBAL KALHORO, J:- Parties are caste fellows and already at odds with each other. On 26.07.2022 when complainant party was available at shop of one Vinu Kolhi near Village Ibrahim Rind Taluka Kunri, appellants and co-accused duly named in FIR riding on two motorcycles came over there. No sooner did they come than they started abusing complainant party and when they were stopped from doing so, they started firing at the complainant party from weapons they were armed with, killing Ghulam Abbas and injuring Muhammad Usman and Gul Bahar. FIR was registered on 28.07.2022. In FIR role of killing deceased Ghulam Abbas is attributed to co-accused Irshad s/o Gul Muhammad.

Applicant Irshad Ali s/o Allah Bux has not been assigned any role and is stated to be present there only, not even armed with any weapon. He has been arraigned in this case on account of being part of unlawful assembly and sharing vicarious liability with co-accused. The role ascribed to applicant Ali Muhammad is of making firing, not hitting anyone among complainant party but his accomplice namely Gul Muhammad, who himself is applicant here. However, after this FIR, applicants also lodged an FIR No.27/2022 in which part of causing injury to Gul Muhammad s/o Wassayo has been attributed to complainant of this case namely Muhammad Usman. Learned counsel in defence has argued that applicants are innocent and have falsely been implicated on the basis of enmity between the parties; no

role has been assigned to applicant Irshad Ali. Role assigned to applicant Ali Muhammad requires further inquiry as in FIR registered by them injury to Gul Muhammad is attributed to complainant Muhammad Usman. The injuries allegedly caused by Gul Muhammad to complainant Muhammad Usman are minor in nature, do not fall within prohibitory clause of Section 497(i) CrPC. More so, the counter version has been registered by accused, therefore, the question as to which party is aggressor is yet to be determined and till then the case of applicant would be of further inquiry. Furthermore, applicant Gul Muhammad's arm as a result of injury has been amputated and he is in critical condition. He has relied upon the case law as 2022 SCMR 547, 2021 PCrLJ 1643, PLD 2009 SC 58, 2011 SCMR 1997 and 2021 SCMR 138.

On the other hand, learned counsel for complainant and learned APG have opposed bail to applicants stating mention of their name in FIR and provisions of Section 324 PPC attracted in the case. They have relied upon the case law as 2022 MLD 1531, 2022 SCMR 1299, 2012 SCMR 556, 2022 MLD 570, 2005 SCMR 1402, 2012 MLD 377 and 2008 PCrLJ 1555.

I have heard learned counsel for parties and perused material available on record including case law cited at bar. While deciding bail application only tentative assessment of material is to be undertaken. FIR, 161 CrPC statements of witnesses reveal that applicant Irshad Ali's only presence has been shown on the spot without any active role, he was not even armed with any weapon at the time of incident, nor has committed any overt act facilitating co-accused or contributing to main incident, therefore, case against him requires further inquiry. Allegations against applicant Ali Muhammad although are that allegedly he made a fire but it hit his accomplice namely Gul Muhammad. But in FIR No.27/2022 said injury is attributed to complainant of this case that he armed with a gun had fired at Gul Muhammad. So as far as injury to applicant Gul Muhammad is concerned, two versions have come on record, which version is correct is yet to be determined and therefore, his case also requires further inquiry.

Notwithstanding, against applicant Gul Muhammad the role of causing fire arm injuries to complainant Muhammad Usman has been alleged. One fire arm injury, complainant received on his ear

and other on his shoulder, upper parts of his body: by narrow escape, therefore, prima facie provisions of Section 324 seems attracted insofar as role of applicant Gul Muhammad is concerned. Although, learned counsel has tried to argue his case on medical ground but no such material has been placed on record to help him get a favorable view in this regard by the Court and hence, the bail of applicant Gul Muhammad on medical ground, not taken, cannot be considered. As far as ground of counter version is concerned, it is settled that mere counter version would not make an accused with specific role of causing firearm injuries entitled to grant of bail.

For foregoing discussion, I am of the view that applicant Irshad Ali and Ali Muhammad have been able to make out a case for bail. Accordingly they are granted post-arrest bail subject to furnishing a solvent surety in the sum of Rs.100,000/- (one lac rupees) each and P.R Bond in the like amount to the satisfaction of learned trial Court. However, bail application to the extent of applicant Gul Muhammad is dismissed.

The observations made hereinabove are tentative in nature and shall not influence the trial court while deciding the case on merits.

JUDGE