

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Crl. Bail Application No. D-44 of 2022

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| DATE OF HEARING | ORDER WITH SIGNATURE OF JUDGE. |
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Present:

Justice Zafar Ahmed Rajput
Justice Irshad Ali Shah

For hearing of Post Arrest Bail Application

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14.02.2023

Mr. Rukhsar Ahmed Junejo, Advocate for applicants.
Mr. Zubair Ahmed Rajput, Advocate for complainant.
Mr. Aftab Ahmed Shar, Additional P.G for the State.

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O R D E R

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ZAFAR AHMED RAJPUT, J.- Applicants/accused Syed Raza @ Ali Raza s/o Alam Shah and Syed Jameel Hussain Shah s/o Ghulam Nabi Shah being abortive to get the concession of post-arrest bail from the Anti-Terrorism Court-I, Sukkur in Special Case No. 14 of 2021, vide order dated 29.03.2022, through the instant application seeks the same concession from this Court in Crime/FIR No. 21 of 2021, registered at Police Station Salehpat under section 302, 120-B, 109, 147, 148, 149, P.P.C. r/w section 6/7 of the Anti-Terrorism Act, 1997.

2. It is alleged that, on 17.03.2021, complainant Dileep Kumar, his journalist son Ajay Kumar, his nephew Nathoo and friend Naresh went to get their haircut at the saloon of Khalil Ahmed, situated near Taxi Stand, Salehpat. It was 09:30 p.m., Ajay Kumar was getting his hair cut, when four unknown persons boarded in a white corolla car and two on 125 motorcycle came there with open faces and duly armed with firearms; out of them, one unknown accused made three straight fires from his T.T. pistol at Ajay Kumar with intention to commit his *qatl-i-amd*, which hit him on his left side abdomen and both shoulders. He was taken to Taluka Hospital Rohri and then to civil Hospital, Sukkur by the complainant where he succumbed to his injuries on the next day at 08:40 p.m., for that

complainant lodged the aforesaid FIR on 19.03.2021 at 05:00 p.m. against the six unknown accused persons. Motive behind the alleged murder, as stated in the FIR, was annoyance of the accused persons at the deceased due to his reporting/writing in newspaper against them.

3. During course of investigation, it revealed by means of some CCTV footages that one Ghulam Akbar was roaming around the house and medical store of the complainant. The investigating officer got the photographs from CCTV and collected information that said Ghulam Akbar was involved in criminal activities and he has connections with criminals Janib @ Jatoi and Ghulam Mustafa. SIP Ashique Ali inspected the place of incident and secured one empty of 30-bore pistol from the threshold of the shop. On 29.03.2021, accused persons, namely, Ghulam Akbar, Ghulam Mustafa and Jameel Hussain Shah (*applicant No.2*) were arrested by the police. Accused Ghulam Akbar led the police party to village Dost Muhammad Mangrio and produced a 30-bore pistol from bushes of *khobar*, which was seized by the police and sent to FSL, Larkana and found matched with empty recovered by the police from the place of incident. Subsequently, on 15.04.2021, further statements of the complainant was recorded by J.I.T., wherein it was first time disclosed by him that on the fateful day accused Ghulam Akbar and Ghulam Mustafa came on 125 motorcycle and behind them accused Syed Raza Shah Jameel Hussain Shah (*present applicants*) and Janib @ Jatoi came in a white corolla car; they had pistols, which they pointing at them stated that they were sent by Inayat Hussain Shah and Ihsan Ali Shah to cause murder of Ajay Kumar; thereafter, accused Ghulam Akbar fired at Ajay Kumar, who became injured on the chair of the saloon, while other accused persons made aerial firing and escaped away.

4. Learned counsel for the applicants contends that the applicants are innocent and they have falsely been involved in this case by the police at the instance of complainant; that the FIR does not contain the name and description

of the applicants; that the applicants were arrested on 29.03.2021 as suspected accused and their identification parade was conducted on 20.04.2021, after delay of 22 days, which carries no legal effects; that there is no direct or indirect evidence against the applicants to connect them with the commission of alleged offence; that the guilt of the applicants requires further inquiry entitling them for the grant of bail.

5. Conversely, learned APG and learned counsel for the complainant maintain that the applicants have hatched the conspiracy leading to the death of the deceased as he being journalist had taken up issue of corruption allegedly made by the applicants with public funds in Town Committee Salehpat; that the applicants on being annoyed earlier to alleged incident got two false FIR lodged against the deceased; that sufficient evidence is available against the applications with the prosecution to connect them with the commission of the alleged offence; hence, they are not entitled to the concession of bail.

6. Heard, record perused.

7. It appears from the perusal of the material available on record that the FIR was lodged by the complainant with delay of two days, yet it does not contain the name and description of the accused persons, which shows that the complainant was completely unaware about the accused persons. It is an admitted position that both the applicants are already known to complainant but he has not nominated them in the FIR. The complainant disclosed the names of the applicants in his subsequent statement, recorded after 25 days of lodging of the FIR, which statement could hardly be treated to be part of the FIR. The applicants were subjected to identification parade through complainant Dileep Kumar, P.Ws Nathoo and Naresh whereby they were identified by them to be the culprits of the incident with a role that they controlled over them and made aerial firing to create harassment. Nothing is mentioned in the FIR regarding making aerial firing by the accused persons. The specific role of causing death of

the deceased by causing him fire shot injuries is attributed to co-accused Ghulam Akbar.

8. So far sharing of common intention is concerned; suffice it to say that weather accused shared common intention with the principal offender when not a single injury has been attributed to him, guilt of such accused calls for further inquiry. Similarly, in the instant case, only allegation against the applicants is that of their presence at the time of murder of deceased at the spot and of firing in the air; besides it, no other overt act has been attributed towards them. Hence, the question of vicarious liability of the applicants with regard to the commonness of their intention for committing alleged offence with the principal offender and/or hatching a conspiracy leading to death of the deceased being journalist allegedly on account of unearthing, misappropriation of funds of Town Committee Salehpat will be determined at the trial.

9. For the foregoing facts and reasons, we have found the case against the applicants is one of further inquiry into their guilt, as envisaged under subsection (2) of Section 497, Cr. P.C. Accordingly, the applicants are admitted to post-arrest bail subject to their furnishing solvent surety in the sum of Rs.2,00,000/- (Rupees Two Lacs only) each and P.R. Bond in the like amount to the satisfaction of the trial Court.

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) tries to misuse 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.

11. The instant Crl. Bail Application stands disposed of in above terms.

Judge

Judge