

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail App. No. S - 514 of 2022

Applicant : Aamir Ali S/o Hashmat Ali Dayo,
through Mr. Mumtaz Ali Naich, Advocate.

Respondent : The State, through Syed Sardar Ali Shah
Rizvi, Additional Prosecutor General.

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Date of Hearing : 10.02.2023
Date of Order : 10.02.2023
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ORDER

Zafar Ahmed Rajput, J. - Through instant Criminal Bail Application, applicant Aamir Ali S/o Hashmat Ali Dayo seeks post-arrest bail in Crime No.105 of 2022, registered at Police Station Ubauro, District Ghotki, under Sections 302, 324, 147, 148, 149, P.P.C. His earlier application for the same relief, filed in Sessions Case No.250 of 2022, was heard and dismissed by learned Additional Sessions Judge/M.C.T.C, Ubauro vide order dated 06.10.2022.

2. Briefly stated facts of the case are that on 18.05.2022 at 1600 hours, complainant Ghulam Nabi S/o Mubarak Ali Panhwar lodged the aforementioned F.I.R. to the effect that he arranged *Malakhro* (traditional Sindhi game) and in the said game the accused namely Hassan Ali and Sohail Ahmed also came for visiting the same and they created nuisance and mismanagement due to which the complainant party restrained them. The accused persons annoyed upon restraining of complainant party and went away while issuing threats that after end of the gam they will come and see the complainant party. It is further stated that at about 07:15 p.m. accused Hassan Ali armed with screw driver, Sohail Ahmed armed with iron rod, Hissam alias Dado armed with *lathi*, Wajid Ali alias Wajoo and Faiz Muhammad armed with *lathies* along with two unknown persons armed with *lathies* came there and told the complainant party that they by exchanging harsh words with them have not done good and have disrespected them, therefore, they would not spare them and would commit

their murder. By saying so, accused Hassan Ali cause screw driver blow to the brother of the complainant Mevo on his chest, accused Sohail Ahmed caused iron rod blow to the injured Mevo on his back which hit him on the right side of his back, accused/applicant Aamir caused iron rod blow to injured Mevo which hit him on his left side of back and he fell down on the ground. Accused Javed caused iron rod blow to his nephew Zakir Hussain which hit him at his head and back, accused Hissam alias Dado cause *lathi* blow to his nephew Khalid Hussain which hit him on his right hand, left arm and right shoulder, accused Wajid Ali caused *lathi* blow to his relative Riaz Ahmed which hit him on his right shoulder and right nipple, accused Faiz Muhammad caused *lathi* blow to his friend Wajid Ali Almani which hit him at his right arm and the unknown accused persons caused kicks and fists blows to the complainant. Thereafter, they raised cries to which the persons came running and the accused persons leaving them ran away. Thereafter, complainant took the injured to hospital for treatment. The injured Mevo was serious as such he was referred to Rahim Yar Khan Hospital, where during treatment he succumbed to the injuries on 16.05.2022. Thereafter, the complainant after his postmortem and funeral rites lodged the F.I.R. against the accused.

3. Learned Counsel for the applicant contends that the applicant is innocent and he has falsely been implicated in the aforesaid F.I.R; that there is delay of about 68 hours in lodging the F.I.R, hence, false implication of the applicant in the instant case after deliberation and consultation cannot be ruled out; that the injury allegedly caused by the applicant does not transpire in the medical report; that it is yet to be determined at the trial that the applicant had shared any common intention with other accused persons for causing death of the deceased, which entitles him for concession of the post-arrest bail.

4. On the other hand, learned Additional P.G. vehemently opposes grant of bail to the applicant on the ground that the applicant is nominated in the F.I.R. with specific role; that the alleged delay has been explained by the complainant in the F.I.R; that the injury allegedly caused by the applicant is reflected in the Medico Legal Certificate, however, with slightly difference that the same has been inflicted on right side on the person of the deceased.

5. Heard the learned Counsel for the applicant as well as learned Additional P.G. and perused the material available on record.

6. The applicant is behind the bars since date of his arrest i.e. 11.06.2022. It is an admitted position that the F.I.R. is delayed with about 68 hours and the explanation so furnished by the complainant is that first they obtained a letter from the Police Station concerned and then they took the injured Mevo Panhwar who, being in serious condition, was referred to Rahim Yar Khan, where he succumbed to his injuries on 16.05.2022 at 11:00 a.m. and, thereafter, he lodged the F.I.R. If even the delay is counted from the time so given for the death of deceased Mevo Panhwar, it appears to be more than two days; hence, deliberation and consultation for lodging of the F.I.R. cannot be ruled out. It further appears that it is specifically mentioned in the F.I.R. that the present applicant caused iron rod blow upon deceased Mevo Panhwar, which hit him left side of his back, however, such injury neither transpires in the Provisional Medical Certificate nor Final Medical Certificate as well as *mashirnama* prepared by the police, which show bruise marks with swelling on the back of "right" lower chest of the deceased; hence, the guilt of the applicant requires further inquiry as contemplated in Sub-section 2 of Section 497, Cr.P.C. for charging him with commission of the alleged offence.

7. For the foregoing facts and reasons, the applicant is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of **Rs.1,00,000/-** (*Rupees one lac only*) with P.R bond in the like amount to the satisfaction of the trial Court.

8. Needless to mention here that in case the applicant misuses the concession of bail in any manner, the trial Court shall be at liberty to recall his bail order after serving notice upon him as per law.

Abdul Basit

J U D G E