

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Bail Application No.S-296 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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15.05.2023
For orders on office objection.
For hearing of main case.

Mr. Abdul Sattar Sarki, advocate for the applicants.

Syed Tarique Ahmed Shah, advocate for complainant.

Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Amjad Ali Sahito, J:- Through instant bail application, the applicants/accused namely, Saeed Khan, Ali Asghar and Abdul Salam seek post-arrest bail in Crime No.21/2022, registered at Police Station Moya, District Tando Muhammad Khan for the offence under sections 302, 109, 506 (2), 35 PPC. Earlier the bail plea of the applicants/accused was declined by the learned Additional Sessions Judge-I, Tando Muhammad Khan vide order dated 30.03.2023.

2. The details and particulars of the FIR are already available in the bail application and FIR, the same could be gathered from the copy of the FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Learned counsel for the applicants/accused has mainly argued that the applicants/accused are innocent and have falsely been implicated in this case; that in fact, the applicant/accused Saeed Khan had lodged FIR of murder of his brother Muhammad Qasim against the complainant and others being crime No.22 / 2021, therefore, in order to create pressure upon the applicants, the complainant has lodged this false FIR, otherwise, no such incident has taken place. He further added that though the applicant Saeed Khan has been shown that he was armed with pistol but he has not used the same and he is stated to have wrapped his towel over the neck of Ghulam Mustafa Khokhar. Learned counsel further argued that role assigned applicant/accused Ali Asghar that he sent the accused for committing murder of deceased; however, admittedly he was not present at the place scene. While role assigned against applicant/accused Abdul Salam is that he has given iron road blow on the back of right shoulder of the brother of complainant. Per learned counsel, the complainant has thrown wide net to implicate as many as persons and involved the entire family of accused. He

lastly prayed that the applicants/accused are in Jail and they are no more required for further investigation and prayed for grant of bail to them. In support of his contentions, he has relied upon the cases reported in 2017 SCMR 279, 2020 SCMR 956, 2021 SCMR 87 and 2021 SCMR 130.

4. On the other hand, learned counsel for complainant as well as learned A.P.G. Sindh have vehemently opposed the grant of bail to the applicants/accused by contending that the names of the applicants/accused are appearing in the FIR with specific roles. However, they admitted that applicants/accused Saeed Khan was armed with pistol but he did not use the same. They stated that the applicant/accused Saeed Khan wrapped his towel over the neck of Ghulam Mustafa Khokhar but admitted that the police has not recovered such towel. Learned counsel for the complainant in support of his contentions, he has relied upon the cases reported in 1979 SCMR 65, 2020 SCMR 2089, 2021 SCMR 1157, PLD 2002 Karachi 99, 2011 MLD 1171 and 2021 MLD 669.

5. Heard and perused the record.

6. Admittedly, enmity is existed between the parties. It is also admitted fact that prior to instant crime, the applicant/accused Saeed Khan had lodged FIR of murder of his brother Muhammad Qasim against the complainant and others being crime No.22 / 2021. Further, record reflects that the applicant/accused Ali Asghar was not present at the place of incident and allegation against him is that on his instigation, accused have committed murder of deceased. *Prima facie*, it is strange to note here that applicant/accused Saeed Khan though was armed with pistol but did not use the same; however, he is alleged to have wrapped a towel over the neck of Ghulam Mustafa, which towel has not been recovered during course of investigation to make it as case property. The allegation against applicant/accused Abdul Salam is that he has given iron road blow on back of right shoulder of the brother of complainant. So far collective charge for committing murder of deceased upon the applicants/accused is concerned, I am fortified with the decision in the case of 'Qurban Ali v. The State and others' (2017 SCMR 279), whereby the Honourable Supreme Court of Pakistan had granted bail to the accused who had not been attributed any overt act during the occurrence except the role of instigation. In such circumstances, it is the trial Court to determine, after recording pro and contra evidence, whether the applicant/accused was vicariously liable for the acts of co-accused. In another case of 'Mumtaz Hussain and 5 others v. The State (1996 SCMR 1125), the bail was granted to accused on the ground that despite being allegedly armed with deadly weapons like rifle, gun and hatchet only caused simple blunt injuries to some of the prosecution witnesses using the wrong side of their weapons. Further, in the instant case, it also appears

that the complainant has implicated entire family of accused by throwing wide net, as such, *prima face*, false implication of applicants/accused cannot be ruled out especially in existence of an admitted enmity between the parties. The applicants/accused are in jail and they are no more required for further investigation and keeping them behind the bars for indefinite period will not improve the prosecution case. At the bail stage, only a tentative assessment is to be made. The case laws relied by learned counsel for the complainant are distinguishable with the facts and circumstances of present case as each case is to be decided by its own facts.

7. In view of the above facts and circumstances, learned counsel for the applicants/accused has made out the case for further inquiry as envisaged in subsection 2 of section 497 Cr.P.C. Consequently, the applicants/accused are admitted to post-arrest bail, subject to their furnishing a solvent surety in the sum of Rs.100,000.00 (Rupees one hundred thousand only) each and PR bond in the like amount to the satisfaction of learned trial Court.

8. It is made clear that if the applicants after getting bail will not appear before the trial Court and the trial Court is satisfied that the applicants become absconder and fugitive to law, then the trial Court is fully competent to take every action against the applicants/accused and their surety including cancellation of bail without referring to this Court.

JUDGE