

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S – 140 of 2023

Cr. Bail Appln. No. S – 154 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGE

Hearing of bail application

1. For orders on office objection at flag 'A'
2. For orders on MA No.1402/2023 (Ex.A)
3. For hearing of bail application

02.10.2023

Applicant Lal Muhammad Shah @ Papan Shah in Cr. Bail Appln. No.S-140/2023 and Syed Zafar Ali Shah and Syed Mujahid Ali Shah in Cr. Bail Appln. No.S-154/2023

Mr. Abdul Qadir Khanzada, Advocate along with Complainant

Mr. Aftab Ahmed Shar, Additional Prosecutor General for the State along with SIP Muhammad Aslam Soomro, Investigating Officer Police Station, Abran

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ORDER

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MUHAMMAD IQBAL KALHORO, J.- Complainant in FIR has alleged enmity with the applicants/accused party on construction of a boundary wall around their house that is adjacent to the house of accused party. Hence, on the day of incident viz. 13.09.2022 applicants along with other accused named in the FIR duly armed with deadly weapons including Rifles and Pistols accosted complainant party at about 1630 hours, when they were doing some work over the said wall. After abusing them, they started beating and firing upon them. In the course of which they critically injured PW Hakim Ali and Nizamuddin and murdered Zahid Hussain and Rahib by either making fires upon them or causing them butt blows. FIR was registered on the next day viz. 14.09.2022 followed by investigation, in which applicants were found guilty. Their attempt to seek pre-arrest bail from the trial Court has been frustrated by the impugned order.

2. Learned counsel for the applicants has chosen to remain absent and his brief has been held by Mr. Muhammad Ali Dayo, who has refused to argue the case.

3. I have heard the applicants in person, they plead that they are innocent, have been falsely implicated in this case only when they registered FIR against the complainant party narrating true story of the incident, but police malafidely disposed it of under 'B' class, which they have challenged in Criminal Misc. Application No.S-728/2022 pending before this Court.

4. Learned counsel for the complainant has opposed bail so also learned Additional PG for the State.

5. When on the last date of hearing viz. 25.09.2023, this case was taken up for hearing, the Counsel who had filed power initially on behalf of the applicants, and had obtained ad-interim pre-arrest bail vide orders dated 03.03.2023 and 13.03.2023, and had remained mostly absent, was absent also. Mr. Zulfiqar Ali Panhwar, Advocate, however had filed power for applicants which was accepted with the above observations and he was given a last and final chance to argue this case with a note of caution that in case he does not appear or argue the case, the matter would proceed, yet he has chosen to remain absent.

6. Be that as it may, I have heard the parties, as mentioned above, and perused the material available on record. In FIR, the applicants have been identified with their names and specific role. Applicant Lal Muhammad Shah is said to have caused butt blow on a vital part of P.W Hakim Ali i.e. head, whereas, applicants Syed Zafar Ali Shah and Syed Mujahid Ali Shah are said to have caused fire arm injuries to deceased Zahid Hussain and Rahib and injured PW Nizamuddin. These allegations are *prima facie* supported by medical evidence in shape of medical certificates and post-mortem reports. The witnesses have also supported the version of FIR qua specific role of the applicants. The Investigating Officer of the case is present and submits that in investigation he found applicants guilty and has further informed that they had joined investigation after obtaining pre-arrest bail, but did not cooperate in investigation and produce the weapons used by them.

7. The aforesaid narration shows that the applicants are *prima facie* involved in the case carrying capital punishment and are seeking a relief

which is extra ordinary in nature and can only be extended to a person, who on the face of record is found to have been falsely implicated out of *mala fide* either by the complainant or by the police to save him from arrest, followed by humiliation, in a non-bailable offence. Whereas in this case in which two persons lost their lives and two were critically injured at the hands of applicants and other nominated accused, no such proposition is in existence for a consideration. It is further informed that in the FIR registered by applicants, the incident is admitted by them but the responsibility is shown against complainant, which FIR after investigation has been disposed of under 'B' class. Therefore no case for relief, as above, is made out in the light of available record against the applicants. The bail applications are dismissed consequently and the ad-interim pre-arrest bail orders already granted to the applicants vide orders dated 03.03.2023 and 13.03.2023 are recalled.

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

9. ***Office is directed to place a signed copy of this order in the connected captioned matter.***

Judge

ARBROHI