

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2810 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For hearing of bail application

12.02.2024

Mr. Noor Nabi Samoo, advocate for the applicants alongwith applicants
Mr. Hussain Bux Balouch, advocate for the complainant
Syed Meeral Shah, Additional PG along with ASI Abdul Wajeed of PS Jati.
Dr. S. Muhammad Yamin Shah, MS, Taluka Hospital Jati

ORDER

Adnan-ul Karim Memon, J. Through this bail application, the applicants Haji Yaqoob and Rafiq seek post-arrest bail in FIR No.07/2023 for offences under sections 302/114/337-H (ii/506 (2) and 35 PPC registered at PS Jati District Sujawal. Their earlier bail plea has been rejected by the learned Trial Court vide order dated 17.11.2023 on the ground that the applicant Haji Yaqoob fired upon Ismail who succumbed to the injuries and died, meanwhile applicant Rafiq also fired upon Allah Dino who succumbed to the injuries and died. Such FIR of the double murder was lodged on 21.02.2023 by the complainant Imam Bux with P.S Jati. The Investigating Officer during the investigation, arrested the applicants and recovered one repeater from the possession of the applicant Haji Yaqoob, however, no recovery was made from the accused Rafique. FSL report of the crime weapon was also obtained as well as a postmortem report of both deceased. The postmortem reports of the deceased Ismail and Allah Dino show that they received firearm injuries on their bodies and died due to severe haemorrhage and cardiopulmonary arrest.

2. Learned counsel for the applicants has submitted that this Court vide orders dated 17.07.2023, 10.10.2023 and 10.11.2023 passed in Cr. Bail Application Nos. 1965 of 2023, 1121 of 2023 and 2393 of 2023 have granted pre/post-arrest bail to the co-accused; and, the case of the applicants is akin, as such rule of consistency is fully applicable in the present case. He has further submitted that the applicants have no role in the FIR, however, they have been saddled with the role of direct firing on both the deceased and without recovery from the applicant Rafiq as his case needs to be looked at differently. He further submitted the applicants were not aware of the happening of the alleged incident that took place at the sea and behind their backs, the case was registered and subsequently, they were arrested due to the personal enmity of the complainant who has admitted in the FIR. He prayed

for allowing the instant bail application, as their case falls within the ambit of further inquiry.

3. Learned APG assisted by learned counsel for the complainant has opposed the bail application of the applicants on the ground that the names of the applicants are much available in the FIR with the specific role of direct firing upon both the deceased. Learned counsel for the complainant has submitted that the delay in lodging the FIR has been properly explained with reasons; that the applicants are involved in the murder of two persons; therefore, they are not entitled to the concession of relief under Section 497(1) Cr.P.C. Learned Counsel for the Complainant has contended that the applicants accompanied by their accomplices, each lethally armed with weapon fired upon the deceased Allah Dino Thahim and Ismail Thahim which hit them on their bodies. The said allegations are prima facie supported by the medical evidence coupled with the FSL report of the crime weapon recovered from the applicant Haji Yaqoob. The offences alleged against them fall within the prohibitory clause of Section 497(1) Code of Criminal Procedure. He further added that in these circumstances they are not entitled to the concession of post-arrest bail; that the participation of the applicants in the assault in question prima facie shows their involvement in the occurrence; that the motive of murder of both the deceased is apparent from the fact that the applicants had come along with co-accused to the place of incident to fight and commit murder of deceased persons by firing upon them; that the entire act was preplanned, and that in such circumstances, bail should be refused. He lastly submitted that this is a case of double murder of two innocent persons, therefore, prayed for the dismissal of the bail application of the applicants.

4. I have heard the learned counsel for the parties and have minutely perused the material available on record.

5. The tentative assessment of the record reflects that the incident took place on 19.2.2023 and was reported to the police after two days i.e. on 21.2.2023. Further, the allegation that the whole occurrence was committed by the applicants/accused needs to be looked into by the trial Court, after recording the statement of the complainant, who happens to be the eye witness as the allegations of direct firing upon both the deceased at the hands of the applicants are prima facie supported by the medical evidence, coupled with the FSL report and recovery of crime empties as pointed out by the prosecution. The offence alleged against the applicants falls within the prohibitory clause of Section 497(1) Code of Criminal Procedure. Prima facie, their presence at the spot cannot be discarded at this stage as the prosecution has alleged specifically against them of firing upon both the

deceased, consequently, two fishermen lost their lives in the aforesaid tragic incident. So far as the bail granted to the co-accused is concerned the role of the applicants is different than the co-accused who were enlarged on bail by this Court as such the rule of consistency cannot be claimed in the present case, for the reasons as the applicants are charged with direct firing upon both the deceased, whereas the role of co-accused as shown in the FIR is mere presence at the spot which needs to be seen by the trial Court as observed in the aforesaid bail applications.

6. Keeping in view the facts and circumstances narrated above as well as the principles of post-arrest bail set forth by the Supreme Court in its various pronouncements and the accumulative effect of the whole discussion and while seeking guidance from the case law on the subject enunciated by the Supreme Court, this Court is of the considered opinion that the applicants have not made out a case for grant of post-arrest bail in the aforesaid crime at this stage.

7. The grounds agitated by the learned counsel for the applicants cannot be assessed at the bail stage without recording the evidence in the matter. This criminal bail application is dismissed with direction to the learned trial Court to examine the complainant within one month positively. MIT II shall ensure compliance with the order, in case the charge is not framed the same shall be framed on the date of hearing so fixed by the trial Court, however, it is made clear that if the Trial Court fails to comply with the direction, firstly the applicants shall be at liberty to move fresh bail application on the ground of non-compliance of the order which shall be decided on merits without being influenced by earlier orders of the trial Court. MIT II shall take steps to report to this court for an appropriate order for placing the matter before the Competent Authority on the Administrative Side.

8. The observation recorded hereinabove is tentative which shall not prejudice the case of either party at the trial.

JUDGE