

HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Criminal Bail Application No.S-19 of 2024

Criminal Bail Application No.S-20 of 2024

Criminal Bail Application No.S-21 of 2024

Applicants/ accused: 1. Syed Qurban Ali Shah
2. Gohar Ali Shah
Both sons of Syed Ghulam Rasool Shah
Through Mr. Shoukat Ali Rahimoon &
Mr. Afzal Kareem Virk, Advocates,

Respondent: The State
Through Mr. Shahzado Saleem, A.P.G.

Complainant: Syed Iqbal Hussain Shah
Through Mr. Shah Nawaz Laghari, Advocate.

Date of order: 18.03.2024

ORDER

Amjad Ali Bohio, J: These bail applications have been filed by above named applicants/ accused seeking post arrest bail in FIR No. 02/ 2024 registered under sections 324, 506(2), 337-A(i), 337-F(i), 34 P.P.C, FIR Nos. 03/2024 and 04/ 2024 under section 25 of Sindh Arms Act at Police Station Dilber Khan Mehar. Their bail application filed by them before Sessions Court were dismissed by Incharge Sessions Judge, Mirpurkhas, vide order(s) dated 01.02.2024 passed in CrI. Bail Application No.136/2024, 134/ 2924 and 135/ 2024.

2. Succinctly, the prosecution story as narrated in the FIR is that on 07-01-2024 at 2230 hours, accused Golden alias Qurban Ali Shah and Johar Shah at the *Otaque* of complainant Syed Iqbal Hussain Shah had caused fire arm injuries to Syed Pir Hussain Shah and farmer Jamal Shar. PW Bagoon Lashari and others had also seen three injuries sustained by Pir Hussain Shah. During investigation of the case, I.O arrested the present applicants on 12.01.2024, who also produced 9 mm and 30 bore pistols which I.O recovered on their pointation on 14.01.2024, thereby FIR(s) No. 3&4 of 2024 under section 25 of Sindh Arms Act, 2013 were registered.

3. The learned counsel for the applicants contends that the FIR was delayed by approximately four (04) days, despite the distance of the police station to the scene as 17/18 kilometers away. It is asserted that the accusations against the applicants revolve around causing firearm injuries to the injured Syed Pir Ali Shah, yet it remains undetermined which of the applicants inflicted injury No. 2, declared as "Jurh Ghayr-Jaifah Mutalahimah" under section 337-F(iii), P.P.C. The offense under this section carries a punishment of up to three years as Ta'zir and does not fall within the prohibitory clause of section 497 Cr.P.C. Moreover, it is noted that the

alleged incident took place on 07-01-2024 at 22:30 hours, yet the injured were examined by the Medico-Legal Officer at Civil Hospital, Mirpurkhas, on 06-01-2024. The medical officer's report indicates only two injuries sustained by Syed Pir Hussain Shah according to both provisional and final medico-legal certificates. However, the FIR and the inspection memo of injuries purportedly describe three injuries inflicted on Syed Pir Hussain Shah. Lastly, the counsel contends that the case is of further inquiry and both applicants, who are real brothers, have been implicated due to enmity. In support of these contentions, reliance is placed upon relevant case laws viz. "Ali Sher and another v. The State (2022 P. Cr. L J Note 33), "Abdul Razzaq v. The State and another" (2017 P Cr. L J Note 166), "Chaudhry Nadeem Sultan v. The State through P.G.Punjab and another" (2022 S C M R 663), "Saad Zia v. The State and others" (2023 S C M R 1898), "Rizwan and 3 others v. The State" (2022 M L D 716) and "Ghulam Rasool v. The State" (2022 M L D 1088).

4. On the contrary, the learned A.P.G and the counsel for the complainant countered the arguments put forth by the learned counsel for the applicants by opposing the bail applications. They asserted that the applicants are specifically named in the FIR with specific roles, and the injuries reportedly sustained by Syed Pir Hussain Shah are severe. Additionally, they highlighted the recovery of the weapons used in the crime based on the applicants' disclosures. Moreover, they emphasized that the offenses outlined in the FIR are non-bailable, thus warranting no leniency in granting bail. In support of their contention, the counsel for the complainant referred to relevant case law viz. "Muhammad Shabbir v. The State" (2008 P Cr. L J 1338), "Shah Tamas Khan and 5 others v. State through AAG and another" (2016 P Cr. L J Note 28) and "Khial Muhammad v. The State through Shaheed Ullah" (2011 P Cr. L J 1308).

5. Heard arguments and perused the record.

6. According to the contents of the FIR, the allegations against the applicants are that they both fired upon Syed Pir Hussain Shah, resulting in him sustaining three firearm injuries. However, this prosecution stance is contradicted by the medico-legal evidence of injured Syed Pir Hussain Shah, where the medical officer provided the following opinion:

Injury No.1. *Lacerated punctured wound of entrance at the right side of the chest just above and medial to the nipples in size 1 c.m in diameter having blackening and inverted margins with fresh bleeding; area around wound was tender. Lacerated exit wound was present near the mid axillary line at the upper right side of the chest in size 02 c.m. in diameter having everted margins with profuse bleeding. Area around wound was tender while right upper limb was mobile but tender during active movement. Movement was restricted due to pain. Bandage was applied while stitches were not applied.*

Injury No.2. *Lacerated wound of entrance at postero-lateral side of the right upper one third of the lower legs in size 01 c.m. in diameter having blackening and inverted margins with fresh bleeding. Lacerated*

wound of exit at lateral side of upper one third of the right lower legs in size 02 c.m in diameter having avorted margins with profuse bleeding. Area around wound was tender. Joints of the lower limb affected were mobile while movement was restricted specifically in right lower limb due to pain. Bandage was applied while stitches were not applied

7. In light of the aforementioned circumstances, it cannot be definitively concluded at this stage whether injured Syed Pir Hussain Shah sustained *two* or *three* injuries. Hence, the discrepancy between the eyewitness testimony and the medical evidence, as per the preliminary assessment, warrants caution regarding the credibility of the prosecution's allegations. In such circumstances, the facts of the case law relied upon by learned counsel for the complainant are quite distinguishable from the facts of the case in hand. In the case of "Syed Abdul Haqi Shah vs. The State" reported as 1997 SCMR 32, the esteemed apex Court ruled that the petitioner should benefit from any discrepancies between the eyewitness testimony and the medical evidence, as observed from the tentative assessment thereof, when considering their application for bail. Similarly, in the case of "Saeed Khan vs. The State" reported as 2011 SCMR 1392, the respected apex Court echoed similar sentiments by emphasizing that such discrepancies should be considered in favor of the petitioner.

"The record also highlights a glaring contradiction between the F.I.R. / supplementary statement and the Medico-legal Certificate issued in respect of the injured victim in as much as according to the F.I.R. / supplementary statement the alleged victim had receive, three firearm injuries on his right lower leg at the hands of the culprits but according to the Medico-legal Certificate issued in respect of the alleged victim there was only one fireshot received by him on his lower leg. These factors have been found by us to be sufficient to put us to caution regarding veracity of the allegations leveled by the complainant party against the petitioner".

8. Further examination reveals that both the provisional and final Medico-legal Certificates of injured Syed Pir Hussain Shah and Jamal Din Shar, contain the date of their examination as 06-01-2024. Additionally, both certificates mention the date and time of the incident as 06-01-2024 at 10:11 p.m. This contradicts the time of the incident stated in the FIR, which is 10:30 p.m. Even if, I consider that the Medico-legal Officer erroneously recorded the date of the incident as 06-01-2024 instead of 07-01-2024, as per the FIR, the occurrence purportedly took place at 10:30 p.m.

9. According to the prosecution's narrative, PW Banhoon was purportedly a witness to the injuries allegedly sustained by Syed Pir Hussain Shah. However, during the investigation, he did not corroborate the prosecution's version of events. Instead, he stated that he was not present at the time of the occurrence. This discrepancy casts further doubt on the credibility of the prosecution's story.

10. In the case of "Muhammad Ijaz v. The State and others" reported as 2022 SCMR 1271, the Honorable apex Court emphasized that the benefit of doubt, if established, can indeed be extended even at the bail stage. Similarly, in the case of "Resham Khan and another v. The State and another" reported as 2021 SCMR

2011, the Honorable apex Court reiterated this principle by stating that the fundamental purpose is to enable the accused to address the criminal prosecution against them rather than detaining them behind bars. It is a well-settled principle of criminal jurisprudence that every accused is presumed innocent until proven guilty, and the benefit of doubt can be granted to them even during the bail stage if the circumstances of the case necessitate it. The fundamental philosophy of criminal jurisprudence underscores that the prosecution bears the burden of proving its case beyond reasonable doubt, a principle applicable at all stages, including pre-trial and the determination of whether the accused is entitled to bail. Similarly, in the case of "Ali Raza v. The State and others" reported as 2022 SCMR 1245, the Honorable apex Court reaffirmed this rationale, asserting that the benefit of doubt may be extended to an accused individual even at the bail stage if the circumstances of the case warrant it.

11. Taking into account the bail plea raised in the cases concerning the production of the crime weapons, it is noted that following their arrest, the accused expressed willingness during interrogation to produce the weapons used in the commission of the aforementioned offense. However, despite this knowledge, the police failed to associate *mashirs* of recovery from the local community, except for the *mashirs* closely associated with the complainant, who are not residents of the locality where the alleged recovery was made. This recovery was documented under a joint memo, indicating that both accused had produced unlicensed pistols. It is significant to note that the FIR in Crime No. 3/2024 does not mention whether the 30-bore pistol allegedly produced by applicant Syed Qurban Ali Shah was unlicensed. While it is acknowledged that the maximum punishment provided for the offense under section 25 of the Sindh Arms Act, 2013, is imprisonment for up to ten years, discretion is vested with the trial court by the legislature, as held by this Court in the case of "Dilawar vs. The State" (2023 P Cr. L J 1684), which reveals as under:

"8. The applicant is confined in judicial custody since the day of his arrest and police has submitted the challan against him; hence he is not required for further investigation. Despite prior information, daylight and roadside, police failed to join any private person to witness the search and recovery process. Record is also silent as to whether applicant is a habitual or previous convict. All the witnesses are police officials; therefore, there is no apprehension of tampering with the prosecution evidence. The case of the applicant is pending for adjudicating into his guilt before the trial Court. The discretion is however left open with the trial Court by the legislature either to award maximum punishment of ten years imprisonment to the applicant or to award lesser punishment keeping in view the surrounding circumstances commensurate with the nature of the case. The Court while hearing bail application does not have to keep in view the maximum sentence provided by statute but the one which is likely to be entailed in the facts and circumstances of the case. Therefore, keeping in view the facts and circumstances of the case, prima facie, case against the applicant requires further enquiry as contemplated under subsection (2) of section 497, Cr.P.C. Accordingly, the applicant is entitled to be released on bail."

12. Likewise, the applicants have been held in judicial custody since the day of their arrest. The challan has already been submitted to the court against them, indicating that they are not required for further investigation. Furthermore, there is no record indicating whether the applicants have a history of being habitual offenders or previous convicts. Therefore, continued custody of the applicants is unnecessary for the prosecution, and it would not serve any useful purpose. As a result, the case against the applicants necessitates further inquiry, and they are entitled to be released on bail for the aforementioned offenses under section 25 of the Sindh Arms Act, 2013.

13. In light of the presented facts and circumstances, the bail applications before this court are granted. The applicants are hereby admitted to bail upon providing a solvent surety of Rs.100,000/= (Rupees One Hundred Thousand) each, along with personal recognizance bonds of the same amount, in connection with FIRs bearing Crime numbers 02/2024, 03/2024, and 04/2024 each of P.S. Dilber Khan Mehar, to the satisfaction of the learned trial Court.

14. However, the observations recorded above are merely preliminary and provisional in nature. They should not in any way prejudice the independent judgment of the learned trial Court throughout the course of the trial proceedings.

Judge

“Saleem”