

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Criminal Bail Application No.S-833 of 2024

Applicants : Hussain Bux and Jawed through Mr. Abdul Rasheed Abro, Advocate.

Respondent : The State through Ms. Rameshan Oad, Assistant Prosecutor General Sindh along with SIP Ali Hassan PS Phulji Village and Dr. Shahid Hussain M.O. DHQ Dadu.

Complainant : Muhammad Hassan through Mr. Mumtaz Alam Lagahri, Advocate.

Date of hearing : 02.12.2024.

Date of Order : 02.12.2024.

ORDER.

Amjad Ali Sahito, J:- Through instant bail application, the applicants/accused namely, Hussain Bux and Jawed seek post-arrest bail in Crime No.01/2024, registered at Police Station Phulji Village District Dadu for the offence under section 302, 324, 337-A (i), 337-F (i), 337-H (ii), 504, 147, 148, 149 PPC. Earlier the bail plea of the applicants/accused was declined by the learned Additional Sessions Judge-I/MCTC Dadu vide order dated 29.06.2024.

2. The details of the FIR are included in the bail application and its attached copy, so there is no need to restate them here.

3. Learned counsel for the applicant contends that the applicants/accused are innocent and have falsely been implicated in this case; that the FIR is delayed by three days and no plausible explanation has been furnished; that the applicants/accused have not caused any injury to deceased Ramzan and Zulfiquar; that in fact role assigned against the applicant Hussain Bux is that allegedly he inflicted Danda blow on the head of Abdullah, which as per medical certificate fall under section 337-A (i) PPC, while applicant Jawed inflicted iron sickle to Hubdar Ali on his right leg and such injury fall under section 337-L (ii) PPC and same are bailable. He contends that in the circumstances, the question of sharing common intention vicarious liability of the present applicants with co-accused would be determined at the time of trial. He contends that it is now tradition of the people that due to enmity they throw wide net and involve as many as persons of the family in the case despite fact that majority of them may be innocent and no person remain free from the case so that he may pursue the case of his family's involved person in the case. He further contends that the applicants are in jail and no fruitful

result would come if they are kept behind the bars for an indefinite period as investigation is complete and they are no more required for further investigation. He contends that co-accused Aijaz having allegations of aerial firing from gun has already been granted post arrest bail by the learned trial Court, as such, applicants are also deserving the same relief since their case is at par. He, therefore, prays for grant of bail to the applicants/accused.

4. Learned A.P.G. Sindh as well as learned counsel for the complainant oppose the grant of bail in favour of applicants/accused and they contend that two innocent persons have lost their lives in the incident. Learned counsel for the complainant contends that the applicants/accused are nominated in the FIR and they are very much involved in the commission of offence as they have shared their common intention. He further contends that in the similar circumstances, in a case reported as 'ALLAH DEWAYO SHAHANI v. The STATE through Prosecutor General, Sindh' [2023 SCMR 1724], Honourable Supreme Court of Pakistan has dismissed bail on the ground that possibility of common object which stands for and connotes a prearrangement and common intention/objective of committing murder of the deceased could not be ruled out; hence, they are not entitled for the concession of bail.

5. Heard and perused the record.

6. From perusal of the record, it reflects that the role for committing murder of deceased is allegedly assigned upon co-accused Ghulam Mustafa Qambrani, Sain Bux. The injuries sustained by injured Abdullah at the hands of applicant Hussain Bux and sustained by injured Hubdar Ali at the hands of applicant Jawed declared by Medical Officer are bailable and does not come within the ambit of prohibitory clause of section 497 (1) Cr.P.C. In such circumstances grant of bail is a rule and rejection is an exception. Furthermore, both the applicants did not cause any injured to both the deceased Ramzan and Zulfiquar. Co-accused Aijaz who is alleged to have made aerial firing from gun and did not cause any injury to the deceased persons, has been admitted to bail by the learned trial Court through the impugned order and the case of applicants also stand on same footings for the reason that they did not cause any injury to the deceased, as such, they also deserve concession of bail considering the principle of consistency. 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. Same was not used in the commission of offence. In the instant case, it is yet to be seen after recording the evidence of prosecution witnesses as to whether the applicants/accused shared a common intention with the co-accused, but until then, the applicants should not be held in detention as the investigation is complete and further custody would not serve any purpose. Further, at the bail stage, only a provisional assessment is made.

7. In view of the above facts and circumstances, learned counsel for the applicants/accused has succeeded to make out the case for further inquiry. Consequently, instant criminal bail application is **allowed** and the applicants/accused are admitted to post-arrest bail, subject to their furnishing a solvent surety in the sum of Rs.100,000/- [Rupees one hundred thousand] each and PR bond in the like amount to the satisfaction of learned trial Court.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants on merits.

JUDGE

Abdullah Channa/PS