

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

Criminal Bail Application No.S-1217 of 2024

Applicants : Barkat and Waseem through Mr. Sajjad Ahmed Chandio, Advocate along with Muhammad Waris Khyder Advocate.

Respondent : The State through Mr. Irfan Ali Talpur A.P.G. Sindh.

Complainant : Allahdad through Mr. Safdar Ali Charan, Advocate.

Date of hearing : 28.11.2024.

Date of Order : 28.11.2024.

ORDER.

Amjad Ali Sahito, J:- Through instant bail application, the applicants/accused namely, Barkat and Waseem seek post-arrest bail in Crime No.92/2024, registered at Police Station Sehwan, District Jamshoro for the offence under section 302, 324, 147, 148, 149, 504, 337-A (i), 337-F (i) PPC. Earlier the bail plea of the applicant/accused was declined by the learned Additional Sessions Judge-II, Jamshoro @ Kotri vide order dated 17.10.2024.

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 applicants contends that the applicant/accused is innocent and has falsely been implicated in this case. He contends that it is now tradition of the people that due to enmity they throw wide net and involved as many as persons for one murder despite fact that majority of them may be innocent. He further contends that there are general allegations against the applicants; however, the main role is allegedly assigned upon co-accused Liaquat and Laique Solangi who made straight fire from their respective pistols upon Mehar Bhanbhro and Mian Bux. He points out that the applicant Barkat Solangi is alleged to have caused iron rod injuries to one Sain Bux and applicant Waseem Umrani is stated to have allegedly beaten one Allah Bux Bhanbhro with his lathi on their heads and different parts of the body, as such, the offence with which the applicants are charged is maximum punishable upto five years. 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 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, therefore, prays for grant of bail to the applicants/accused. In support of his contentions, he has also relied upon 2012 SCMR 887, 2021 SCMR 87, 2022 SCMR 198, 2023 SCMR 999, 2022 PCr.LJ Note 33 and 2018 YLR Note 226 and 2015 YLR 2595.

4. On the other hand, learned A.P.G. Sindh and learned counsel for the complainant vehemently oppose the grant of bail to the applicants/accused. Learned counsel for the complainant further contends that the applicants/accused are equally responsible for the murder of deceased as they were along with co-accused with common intention.

5. Heard and perused the record.

6. From the perusal of record, it reflects that if any role assigned is against Liaquat and Laique so also Javed Solangi otherwise, the role attributed against applicants Barkat Solangi and Waseem Umrani is that they have caused lathi and iron rod blows to PWs; and as per medical certificate both the injuries were declared to be under section 337-A (ii) PPC. The offence with which the applicants are charged is maximum punishable upto five years, which does not come within the ambit of section 497 (1) Cr.P.C. Further, grant of bail is a rule while rejection is an exception. The applicants were not charged for firing any shot at the deceased and only they have booked for inflicting lathi and iron rod injuries to the injured persons but not upon deceased Mehar and in such circumstances, as to whether the applicants in view of roles assigned against them could be held to be vicariously responsible for the murder of deceased and as to whether they could be awarded sentence in terms of imprisonment in view of proviso to section 337-N (2) PPC and it is only the trial Court to determine. Even, there is nothing on record to show that the applicants were hardened, habitual, dangerous or desperate criminal. All these things require further inquiry. More so, most members of the family are roped in this case by the complainant, as such, *prima facie*, it appears to be custom to implicate more persons of the accused party so that there may not be any free person to follow the case of involved accused. The prosecution case will not be improved if the applicants are kept in jail for undecided period. They are no more required for further investigation. At the bail stage only a tentative assessment is to be 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 as envisaged in subsection 2 of section 497 Cr.P.C. Consequently, instant criminal bail application is **allowed** and the applicants are admitted to post-arrest bail subject to his 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. 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 applicant on merits.

JUDGE

Abdullah Channa/PS