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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Ist. CrI. Bail Appln. No.S-361 of 2014.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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Mr. Faiz Muhammad Larik, advocate for the applicant.

Mr. Ahsan Ahmed Qureshi, advocate for complainant.

Mr. Khadim Hussain Khooharo, D.P.G.

Date of hearing : 26.9.2016.

Date of order : 26.9.2016.

ORDER

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ZAFAR AHMED RAJPUT, J. Through instant CrI. Bail Application, applicant Mehar Ali son of Ghulam Qadir Junejo seeks post arrest bail in Sessions Case No.44/2013 arisen out of FIR No.261/2012 registered at Police Station Ratodero, District Larkana under section 302, 324, 114, 34, PPC. His earlier bail application along with other co-accused persons namely, Izhar Ali and Irfan Ali was heard and dismissed by the learned V-Additional Sessions Judge, Larkana vide order dated 11.06.2014.

Brief facts of the case are that on 31.12.2012 at 1.00 p.m complainant Qurban Ali lodged FIR at Police Station Ratodero, alleging therein that accused Mehar Ali had kept dogs and persons of locality were being disturbed by them on which they had asked to accused persons for tethering them in house. It is further alleged that on 31.12.2012 complainant along with his cousins, namely, Yaseen Ahmed, Altaf Hussain, Bashir Ahmed and nephew Zubair Ahmed were standing in a street adjacent to their house, when at about 8.00 a.m. accused Mehar Ali having armed with hatchet, Izhar, Irshad, Irfan having armed with Repeaters came there and on the instigation of accused Mehar Ali, accused Izhar made straight fire upon Yaseen with intention to commit his murder which hit him on his abdomen, accused Irshad Ali made straight fire from his Repeater upon Altaf Hussain which hit him on his chest, accused Irfan made straight fire from his Repeater upon Bashir Ahmed which hit on his left arm, accused Izhar made straight fire from his Repeater upon nephew of complainant, namely, Zubair

Ahmed which hit on his left leg and then accused persons made indiscriminating firing upon injured and accused Irshad was in front of them who also received fire of his brothers and all accused took their brother Irshad Ali and went away towards their house. Thereafter, they brought the injured Yaseen, Altaf, Bashir and Zubair at CMCH Larkana where Yaseen and Altaf succumbed their injuries and while leaving injured at hospital for their treatment the complainant brought the dead bodies of both deceased at Taluka Hospital Ratodero, from where he appeared at P.S and lodged FIR to the above effect.

Learned counsel for the applicant has mainly contended that the applicant is innocent and has falsely been implicated in this case. He has further contended that admittedly there is counter version of the same incident, one reported by the complainant of the instant case, namely, Qurban Ali being Crime No.261/2012 and the other by Mst. Sapna, daughter of applicant vide Crime No.07/2013 at the same Police Station. He has further contended that two persons have lost their lives and two persons received injuries from the side of the complainant party whereas one person namely, Irshad Ali has lost his life from the side of the applicant/accused, hence it is yet to be seen and determined at the time of trial that who is aggressor and who is aggressed upon. He added that only allegation against the present applicant is that of instigation though he was allegedly having hatchet in his hand at the time of alleged incident but he did not use the same and none of the member of the complainant party had sustained any hatchet injury and since it is settled law that question of sharing common intention and vicarious liability would be determined at the time of trial.

On the other hand, learned counsel for the complainant has maintained that the name of the applicant transpires in the promptly lodged FIR with serious allegation of instigating the co-accused for committing murder of two persons so also causing injuries to two injured and the eyewitnesses have also supported the prosecution case so also medical evidence is in line with them. He added that at bail stage only tentative assessment of allegations against the accused persons in the light of the material collected by the prosecution is to be considered and in present case there is

sufficient material available on record to connect the present applicant with the commission of alleged offence.

Learned D.P.G appearing for the State by adopting the arguments of the counsel for the complainant has opposed this application.

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

It appears that the name of the applicant appears in the FIR with specific role of instigation as on his instigation his two sons, namely, Izhar and Irfan fired from their Repeaters upon the complainant party which resulted in the death of two persons namely, Yaseen and Altaf Hussain while P.W namely, Bashir and Zubair sustained injuries, hence he shared common intention in the commission of the offence.

Ordinarily it is not proper for the Court, at bail stage, to involve itself as to whether there existed a vicarious liability or not but the rule is not inflexible if in the circumstances of the case it can be gathered that the accused had pre-planned a scheme, hatched a conspiracy and in execution of that plan or conspiracy they participated in the commission of offence, question of vicarious liability would apply with full force. In the instant case, it is alleged that the complainant party was standing outside their house when the accused party being annoyed of the complaint made by the complainant party for sticking their dog in their feet they went in their house and came back with weapons and fired upon the complainant party on the instigation of applicant/accused. Hence, the applicant/accused appears to have acted in pre-concert and shared the common intention with his co-accused, namely, Izhar and Irfan who caused fatal injuries to deceased; hence, he can be saddled with constructive/vicarious liability by invoking Section 34, PPC.

So for the arguments of the learned counsel for the applicant with regard to counter cases between the parties is concerned, it may be noted that in the case in hand the FIR was lodged promptly by the complainant on 31.12.2012 while in counter case the daughter of the applicant lodged FIR on 11.01.2013 with the delay of 11 days, hence in present case from the tentative assessment of the material available with

prosecution against the applicant appears that the prosecution has sufficient material to connect the present applicant with the commission of the alleged offence, hence no case of further enquiry has been made out at this stage of the case, therefore, this application for grant of bail to applicant being without substance is accordingly dismissed.

This bail application was dismissed vide short order dated 26.09.2016 and these are the reasons for the same.



Judge