

DATE OF
HEARING
18.08.2014.

ORDER WITH SIGNATURE OF HON'BLE JUDGE.

1. For orders on office objection.
2. For orders on M. A. No.2124/2014.
3. For Hearing.

Mr. Habibullah G. Ghouri, advocate, advocate for the applicants.
Mr. Imtiaz Ali Jalbani, Asst. Prosecutor General.

This bail application has been filed by applicants/ accused Azhar, Zakaullah and Altaf alias Atta Muhammad, all by caste Detho, who have been indicted in crime No.32/2013, registered at Police Station Aaqil, District Larkana, for offence under Sections 302, 324, 148, 149, 337-H(2), 504, PPC.

2. According to the case of prosecution, on 21.10.2013, at about 9.00 p.m., complainant Amjad Detho was standing alongwith his nephews Shahid, Mushtaque Ahmed, brother-in-law Qurban and relatives Ghulam Hyder, Ayaz Ali, Ashfaqe and Abdul Sattar, all by caste Detho, in the street situated near his house in Village Masoo Hab, Taluka Larkana, when 15 accused persons named in the F.I.R, including the present applicants, armed with different weapons, such as, Pistols, K.Ks and Repeater Guns, came there and accused Wazir Detho fired a pistol shot at Abdul Sattar, who expired, Whereas, accused Nisar, Muhammad Nawaz, Azhar, Fahad, Zakaullah, Altaf alias Atta Muhammad, Zubair, Qaisar, are alleged to have fired at prosecution witnesses causing them injuries. Complainant Amjad Detho lodged F.I.R of the incident on the same day at 11.00 p.m.

3. At the very outset, learned Counsel for the applicants submits that there were in fact 13 accused, out of whom 10 were let-of including the principal accused Wazir Detho, who is alleged to have caused fatal injury to the deceased, whereas the applicants, though role has been assigned, are not alleged to have caused any injury to the deceased. Learned Counsel submits that the applicants are alleged to

have caused injury on the wrist, left ankle and belly of the prosecution witnesses. Learned Counsel for the applicants further submits that none of these are said to be vital parts of the body. It is contended by the learned Counsel that the applicant No.1 has also lodged an F.I.R as a counter version bearing crime No.36/2013, wherein all the accused are absconders and challan in both the cases have been submitted. It is further the case of the applicants that the real brother of the deceased has filed an affidavit attributing the allegation to the accused of crime No.36/2013 and not against present applicants. He submits that as per version of the F.I.R No.36/2013, which is a counter-version, the investigation corroborates with it as it is claimed in the subsequent F.I.R that deceased Abdul Sattar died instantaneously and not at the hospital as mentioned in the earlier F.I.R bearing crime No.32/2013. Learned Counsel further added that in the cases of counter-versions it is settled principle that bail is to be granted as it becomes a case of further inquiry. The learned Counsel relied upon the reported cases of *Jaffar v. The State*, (1980 SCMR 784), *Amjad v. The State*, (1982 SCMR 955), *Meeran Bux v. The State*, (PLD 1989 SC 347), *Mumtaz Hussain v. The State*, (1996 SCMR 1125), *Shoaib Mehmood Butt v. Iftikhar-ul-Haq*, (1996 SCMR 1125) and *Muhammad Shahzad Siddique v. The State*, (PLD 2009 SC 58). Learned Counsel submits that in all the above referred authorities of the Hon'ble Supreme Court it is unanimously held that in cases of counter-version bail is to be granted.

4. On the other hand, learned Asst. Prosecutor General very candidly opposed the bail application as some role has been assigned to all the applicants. He, however, submits that as far as the rest of the accused are concerned, the names of the rest of the accused have been placed in Column No.2 meaning thereby that they have been let-of, however he urged that there is no order of the Magistrate that he has taken cognizance against these 10 accused or they have been allowed to be let-of and he has also not been able to place any order of the

Magistrate in this regard. He, however, concedes to the fact that in cases of counter-versions, they become cases of further enquiry as has been held by the Hon'ble Supreme Court in referred judgments.

5. Though the notices have been issued to the complainant, but since they have been declared absconder, ^{in connected FIR NO 36/13} hence none has appeared.

6. I have heard the learned Counsel and perused the material available on record.

7. So far as contention that in all cases of counter-version bail is to be granted as it becomes a case of further inquiry cannot be taken as a rule, as it depends on facts and circumstances of each case.

8. It is matter of fact that no weapon has been recovered from the applicants to corroborate it with the offence that has been allegedly committed, whereas the version of the complainant in crime No.32/2013 is not corroborated from the medical evidence. Although it may not be taken as a rule, but in terms of the counter-versions in this case tentatively it has come out as a case of further enquiry. Furthermore, the subsequent F.I.R was lodged pursuant to an application under Section 22-A, Cr.P.C filed within 04 days of the alleged incident. In view of the facts and circumstances of the case, where no specific role is assigned as far as the fatal injury caused to deceased Abdul Sattar is concerned, it has apparently become a case of further enquiry. Furthermore, it is yet to be decided as to which of the parties is aggressor and which one is aggressed to. Learned A.P.G has also conceded that as far as cross-versions are concerned, it too provides that this is a case of further enquiry, hence the applicants are admitted to bail subject to furnishing surety in the sum of Rs.200,000/- (Rupees Two Lac) each and P.R bond in the like amount to the satisfaction of the trial Court.

JUDGE