

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Bail Application No. **S-266** of **2021**

Applicant	:	Sajid Ali s/o Fida Hussain Jhatial, through Mr. Athar Abbas Solangi, advocate
Respondent	:	The State, though Mr. Ali Anwar Kandhro, Addl. P. G.
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Date of hearing	:	26.07.2021
Date of order	:	26.07.2021
		=====

ORDER

ZAFAR AHMED RAJPUT, J- Through instant Crl. Bail Application, applicant/accused Sajid Ali s/o Fida Hussain Jhatial, seeks post arrest bail in Crime No.01/2021 registered at Police Station Baqrani, District Larkana, under sections 302, 148, 149, 337-H(ii), 114, PPC (*as per F.I.R*), 302, 201, 120-B, PPC (*as per final challan*). His earlier bail application bearing No.417 of 2021 was heard and dismissed by the IIIrd Additional Sessions Judge/MCTC, Larkana vide order, dated 26.03.2021.

2. Briefly stated, the prosecution case as per F.I.R. are that on 01.01.2021, complainant Nizamuddin s/o Ali Gohar lodged the aforesaid F.I.R stating therein that a dispute between complainant party and Nazar Muhammad Jhatial and others was going on over the landed property, to which Nazar Muhammad and others were annoyed with the them and used to say that they would cause physical loss to them. It is further stated that, on 31.12.2020, the complainant along with his brother's sons, Sajid Ali, Mansoor Ali and his brother Fida Hussain, while riding on separate motorcycles went Baqrani in connection with their work and thereafter they were returning to their village at 07:30 p.m. and reached at Kabeer Shah where they confronted with seven persons, out of them, five persons were identified as Sabir Hussain armed with Pistol, Bakhsh Hussain with rifle, Akber with pistol, Jabir

with K.K and Nazar Muhammad with repeater, all by caste Jhatial, resident of village Bahoo Jhatial Taluka Baqrani. Sabir Hussain and Akber Hussain made straight fires at Fida Hussain, who fell down. They raised cries which attracted to the villagers and on seeing them coming, the accused persons went way towards their houses. Fida Hussain expired at the spot due to firearm injuries and after his burial complainant lodged the F.I.R to the above effect.

3. After registration of the F.I.R, the case was investigated initially by SIP/SIO Ashique Ali Soomro and then by a Joint Investigation Team (**J.I.T**), constituted by the S.S.P. Larkana, vide order dated.19.01.2021. During investigation, statements under section 161, Cr.P.C of defence witnesses, namely, Hazoor Bux, Noor Muhammad Jhatial and Sain Rakhio Khakhrani were recorded wherein they stated that accused Sajid Ali (*witness in the present F.I.R and son of deceased Fida Hussain*) had committed the murder of his father in collusion with accused Nizamuddin (*complainant*) and Mansoor Ali (*witness in F.I.R*). As per J.I.T, accused Sajid Ali admitted his guilt before electronic media and crime weapon was also recovered from him on his pointation. On 20.01.2021, J.I.T also recorded the statements of independent witnesses, namely, Moulana Ali Sher Jatoi, Hafiz Khadim Hussain, Abdul Jabbar, Abdul Qayoom, Mujahid Ali, Fazul Muhammad and Chanesar. Consequently, police submitted final report concluding that the complainant party was involved in the murder of deceased Fida Hussain while nominated accused persons were innocent and their names were kept in column No.2 in final charge sheet.

4. Learned counsel for the applicant/accused has contended that the applicant is innocent and has falsely been implicated in this case by the original nominated accused persons in the F.I.R with the connivance of police; that the complainant at the time of alleged

incident was present at the occurrence along with other eyewitnesses and despite of his requests, the investigating officer did not record their statements under section 161, Cr.P.C.; that on 05.1.2021, the complainant submitted an application before the S.S.P. Larkana apprising him of non-recording of statements of his witnesses and non-arrest of the nominated accused by requesting him for fair investigation and legal protection as the S.H.O., P.S. Baqrani had already intended to implicate the complainant and other witnesses of the occurrence in commission of murder of deceased Fida Hussain; the said application was endorsed by the S.S.P. Larkana to D.S.P. Baqrani for taking action as per law; thereafter, on 06.1.2021, complainant submitted same application before the Judicial Magistrate-I, Dokri alleging that the S.H.O., P.S. Baqrani wanted to destroy his case and despite arresting nominated accused Bakhsh Hussain and Jabir, he was not getting remand and also requested for recording statement of his witnesses. The Judicial Magistrate called the said S.H.O. who appeared before him on 08.1.2021 but denied from making any arrest in the F.I.R, besides the complainant also filed CrI. Misc. Application No.40/2021 u/section 22-A & B (6)(iii), Cr.P.C before the learned Ex-Officio Justice of Peace, Larkana apprising him regarding murder of his brother and negligence of police in respect of investigation and arrest of nominated accused and the pressure being put by the police upon the complainant and his family members for compromise with the accused persons; however, the said application was disposed of by the learned Ex-Officio Justice of Peace vide order, dated 16.01.2020, by directing the respondents for providing protection to complainant; that the investigation made by the investigating officer and J.I.T was tainted with malice as the same was conducted under the influence of the nominated accused persons and the investigation report on the basis of statements of Hazoor Bux Jhatial (*son of nominated accused Nazar Muhammad*) and Noor Muhammad

(brother of nominated accused Akber Ali) whereby the applicant has been involved in the commission of murder of his father is on false and fabricated assertions; that the J.I.T managed statements of seven other alleged defence witnesses, who have deposed in their statements that all the nominated accused were available at Moulana Ali Sher Jatoi from 05:30 p.m. to 08:30 p.m. on the day of the incident, the evidence of such defence witnesses is not admissible at the stage of investigation; that is too without recording of statements of complainant's witnesses; that the complainant had already impugned the order of Judicial Magistrate before this Court, through Crl. Misc. Application No.S-75/2021, whereby he took the cognizance against the applicant; that the applicant is victim of police excesses whereby the police exonerated in the investigation the nominated accused of the F.I.R. and falsely implicated the applicant for the commission of murder of his father Fida Hussain; that Nizamuddin, the complainant of the F.I.R, and Mansoor Ali, the eyewitness, have already been granted bail by the trial Court vide order dated 26.2.2021; that the case of the applicant requires further enquiry entitling him for the grant of bail.

5. On the other hand, learned Addl. P. G has vehemently opposed this application on the ground that the investigation has been conducted by the duly constituted J.I.T, which recorded the statements of the witnesses who have fully implicated the applicant/ accused and the crime weapon viz. pistol was also recovered from the possession of the applicant, hence he is not entitled to concession of bail.

6. Heard the learned counsel for the applicant as well as learned Addl. P. G and perused the material available on record.

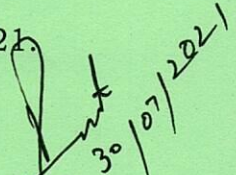
7. It appears that the applicant has been shown in the F.I.R as eyewitness of the incident. The deceased Fida Hussain was his father

and the F.I.R has been lodged by his uncle Nizamuddin. It further appears that initially the investigation was conducted by SIP/SIO Ashique Ali Soomro of Police Station Bakrani and then by the J.I.T and on the findings of the J.I.T, a report under section 170/173, Cr.P.C was submitted wherein said complainant of the F.I.R as well as present applicant were implicated for the murder of said deceased. It is also an admitted position that though prosecution claims that the applicant has admitted his guilt before electronic media, yet no confessional statement of the applicant has been recorded before a Magistrate as required by law. It is also a matter of record that both the parties are having inimical terms and at least five criminal cases are already pending adjudication against the complainant party lodged either by the nominated accused Hazoor Bux and Sabir Hussain or they are PWs in those cases and on their statements, the J.I.T implicated the applicant and complainant of the F.I.R with the commission of alleged murder by considering the defence version and by placing the names of nominated accused persons in column No.2 of the charge sheet with blue ink. Hence, it is yet to be seen at the trial which of the two versions- the version narrated by the complainant in the F.I.R or the version of the nominated accused persons recorded by the J.I.T- is correct, Hence, from the tentative assessment of the material available on record the guilt of the applicant *prima facie* calls for further enquiry as envisaged under sub-Section (2) of Section 497, Cr.P.C. Accordingly, the applicant is admitted to post arrest bail subject to his furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two hundred thousand only) and P.R bond in the like amount to the satisfaction of the learned trial Court.

8. Needless to mention that the observations made hereinabove are tentative in nature which shall not influence the trial Court while deciding the case on merit. In case the applicant misuses the

concession of bail, the trial Court shall be at liberty to cancel his bail after serving upon him requisite notice.

9. Above are the reasons of my short order dated 26.7.2021.


30/07/2021
Judge