

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
1st CrI. Bail Appln. No.S-676 of 2019

Date of Hearing	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objections.
2. For hearing of Bail Application.

Mr. Mohammad Afzal Jagirani, advocate for the applicants.

Mr. Ali Anwar Kandhro, Addl. P.G.

Nemo for the complainant.

Date of hearing : 13.02.2020.

Date of Order : 13.02.2020.

ORDER

ZAFAR AHMED RAJPUT, J.- After rejection of their bail application bearing No.1018 of 2019 by the learned 5th Additional Sessions Judge, Shikarpur vide order dated 09.10.2019, applicants/accused 1) Shahzado son of Shahzore, and 2) Badar alias Badaruddin son of Ghulam Rasool, both by caste Kalar, through instant criminal bail application seek post arrest bail in Crime No.49 of 2019, registered at Police Station Khanpur, under Sections 302, 337-H(2), 114, 147, 148, 149, PPC.

2. On 28.6.2019, at 2100 hours, complainant Hakim Dad Kalar lodged FIR at Police Station Khanpur, stating therein that on the said date he, his cousin Rais Din Mohammad Kalar, nephew Qamaruddin Kalar and another cousin Nasrullah Kalar, while sitting on the benches lying outside the hotel of Shaman Jhullan situated at Zarkhail Stop, were waiting for Juma Prayers, when at about 1.00 p.m., accused persons, namely, 1) Naveed armed with TT Pistol, 2) Niaz armed with Kalashnikov, 3) Shahzado armed with repeater, 4) Badaruddin alias Badar armed with 222 rifle, 5) Ghulam Fareed alias Fareed armed with TT Pistol, 6) Zubair armed with TT Pistol, and 7) Captain armed with gun, all by caste Kalar, emerged there on motorcycles and on the instigation of accused Captan Kalar, accused Naveed fired with his TT Pistol upon complainant's cousin Rais Din Mohammad and committed his murder, while other accused persons made ineffective aerial firing and fled away.



3. Learned Counsel for the applicants has mainly contended that the applicants are innocent and have falsely been implicated in this case due to enmity; that there is delay of about 08 hours in lodging the FIR, for which no plausible explanation has been furnished by the complainant; that no overt act/active role has been attributed to the present applicants/accused, as none from them is alleged to have caused firearm injury either to the deceased or any of the P.Ws and as per FIR both the applicant are only alleged to have made ineffective aerial firing; that nothing incriminating is shown to have been recovered from any of the applicants. Lastly, learned Counsel has contended that the case against the applicants requires further enquiry, therefore, they may be enlarged on bail.

4. On the other hand, learned Addl. P.G. has opposed the bail application, on the grounds that the applicants are nominated in the FIR with specific role; that they both being armed with deadly weapons formed an unlawful assembly with co-accused and shared common intention and also made aerial firing to facilitate the co-accused, who committed murder of the deceased; that the delay of only 08 hours in lodging FIR, *ipso facto* is no ground for grant of bail to an accused facing charge of the offence, that falls within the prohibitory clause of Section 497, Cr.P.C.

5. Heard the learned Counsel for the parties and perused the material available on record.

6. It is undeniable fact that none of the present applicants/accused has caused any injury either to the deceased or any of the P.Ws. The only role assigned to the applicants/accused is of making ineffective aerial firing. So far question of sharing common intention is concerned particularly when no injury is attributed to an accused, the law in this regard is well settled that it is always a question of further enquiry. Similarly, in the instant case, only allegation against the applicants is that of their presence at the time of commission of alleged offence at the spot and of making ineffective aerial firing; besides it, no other overt act is attributed to them; hence, the question of vicarious liability of the applicants with regard to the commonness of their intention for committing alleged offence will be determined at the trial. In

the circumstances of the case mentioned above, I find that this is a fit case, wherein the participation of the present applicants/accused in the commission of alleged offence, needs further enquiry as envisaged under sub-section (2) of Section 497, Cr.P.C. Accordingly, the bail application is allowed. The applicants are admitted to bail subject to their furnishing solvent surety in the sum of Rs.300,000/- (Rupees three hundred thousand only) each and P.R bonds in the like amount to the satisfaction of the trial Court.

7. It would be needless to mention here that the observations recorded hereinabove are tentative in nature, which, in no manner, shall influence the trial Court while deciding the case of the applicants on merits. In case any of the applicants misuses the concession of bail in any manner, it would be open for the trial Court to cancel his bail after issuing him the requisite notice.


JUDGE

Qazi Tahir PA/*