

THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO

Cr. Bail Appln. No. D-18 of 2019

Present:

Mr. Justice Zafar Ahmed Rajput,
Mr. Justice Shamsuddin Abbasi,

Applicants: 1. Hazar Khan alias Hazaro,
2. Irfan,
3. Sajid Ali,
4. Luqman
Through Mr. Safdar Ali G. Bhutto, advocate.

Complainant: Khan Saeed, through Mr. Mujahid Ali Jatoi,
Advocate.

Respondent: The State, through Mr. Ali Anwar Kandhro,
Additional Prosecutor General,

Date of hearing: 28-01-2020

Date of short order: 28-01-2020

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SHAMSUDDIN ABBASI, J: Through instant Crl. Bail Application, applicants Hazar Khan alias Hazaro son of Abdul Ghaffar Kehar, 2. Irfan alias Kato son of Shahmeer Khan Kehar, 3. Sajid Ali son of Zameer Hussain Agani and 4. Luqman son of Hussain Bux Phulpoto have sought for their admission to post-arrest bail in Crime No.09/2019, registered at P.S. Naudero (District Larkana), registered for offences punishable under Sections 302, 120-B, 337-H(2), 114, 148 and 149 P.P.C, read with Sections 6/7 of Anti-Terrorism Act, 1997, after rejection of their bail plea by the learned trial court vide order dated 28.05.2019.

2. Facts of the prosecution case as per F.I.R are that on 13.02.2019, complainant Khan Saeed Lodged the F.I.R, stating therein that the complainant along with Badshah Khan and Rematullah on one Chingchi, while his father Waheed Gul, Arab Gul and Rais Khan on another Chingchi were going from Larkana to Madeji for labour purpose. At about 0845 hours,

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they reached near brick-klin at Sugar Mill by pass road, Naudero, where two unknown accused with open faces who can be identified if seen again, came on motorcycle in front to Chingchi. They took out pistols from their fold and made direct fires upon Waheed Gul, Arab Gul and Rais Khan and went away towards Larkana. The complainant saw Rais Khan and Waheed Gul, who found to be dead having fire arm injuries while Arab Gul was injured. The complainant brought the dead bodies and injured at Naudero hospital. The injured Arab Gul was taken to Larkana for immediate treatment, but he succumbed to his injuries, hence the complainant lodged the instant F.I.R.

3. It is contended by the learned counsel for the applicants that the applicants are innocent and have been falsely implicated in this case; that neither they are nominated in the FIR nor their names have been disclosed by prosecution witnesses in their statements under section 161 Cr.P.C recorded on 18.02.2019, their names were transpired in the further statements of complainant and eyewitnesses, that per FIR, complainant implicated two unidentified accused in the commission of offence but the complainant and prosecution witnesses exaggerated from their first version and disclosed names of four persons in their further statements recorded by the I.O, which were recorded belately by 15 days after the incident; that no source of identification has been disclosed by witnesses; that during investigation complainant has introduced two other eyewitnesses, namely, Karwan and Usman as witnesses of the alleged incident; that applicants were arrested from their village on 17.02.2019 and Police kept them in illegal detention, as father of applicant Hazar Khan had made such online complaint on 19-02-2019, besides that one Mst. Shahida, the relative of applicant Hazar Khan, Sajid Ali and Irfan had also filed a Constitutional Petition D-105 of 2019 before this court regarding illegal arrest and detention of the applicants; that the applicants are in custody and they are no more

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required for further investigation; that case of applicants/accused requires further inquiry/investigation in terms of Section 497(2) Cr.P.C, he finally prayed for grant of post arrest bail to the applicants/accused.

4. On the other hand, learned D.P.G. assisted by the learned counsel for the complainant has contended that though the applicants are not nominated in the F.I.R but prosecution witnesses have implicated them through further statements recorded by the I.O; that this is heinous offence in which three innocent persons were brutally murdered and there is no enmity of complainant party with the accused to falsely implicate them in this case; that crime weapons have been recovered from the possession of applicants/accused; that medical evidence as well as circumstantial evidence corroborated the ocular version, hence the applicants are not entitled for concession of bail.

5. We have heard learned counsel for the respective parties and perused the material available on the record with their assistance.

6. Admittedly, the names of applicants do not transpire in the F.I.R as well as in the statement U/S 161 Cr.P.C of P.Ws Badshah and Rehmatullah recorded on 18.02.2019, even no descriptions of accused persons have been mentioned therein. It is matter of record that I.O recorded the further statements of complainant and alleged eye witnesses on 28.02.2019, whereby they disclosed the names of four accused persons after delay of 15 days of registration of F.I.R and no source of information about identity of the accused has been disclosed by the complainant and P.Ws in their further statements. It is pertinent to mention here that in the F.I.R, two unidentified accused were implicated, but complainant and both eye witnesses have exaggerated and implicated four persons in their further statement. It is also pertinent to mention here that during investigation, the complainant party has also introduced two more eye-witnesses of the incident, namely, Usman Ghani and Karwan, which appears to be improvement in the case. Learned counsel for the applicants

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has produced copy of complaint made by father of applicant/Hazar Khan to I.G regarding illegal detention of his son Abdul Ghafoor and four others on 20.02.2019. He has also produced copy of C.P. No. D-105 of 2019, filed by Mst. Shahida Khatoon before this Court in respect of illegal detention of accused Irfan, Sajid, Hazar Khan and other persons by S.H.O P.S. Naudero and other police officials of the District Police Larkana on 25.02.2019, whereas names of applicants were disclosed by prosecution witnesses on 28.02.2019. It is well settled proposition of law that implication of accused through further statements, makes out the case for further inquiry in terms of Section 497(2) Cr.P.C. The Hon'ble Apex Court in case of *Abid Ali alias Ali v. The state* (2011 SCMR 161), released the accused/petitioner therein on bail, while observing that:

"It is an admitted that name of the petitioner is not mentioned in the F.I.R, but his name was included in the list of accused in supplementary statement. There is no explanation available in this regard, therefore, the case of the petitioner falls under the category of further inquiry."

The Hon'ble Supreme Court of Pakistan, in another case of similar nature i.e. case of *Noor Muhammad v. The State* (2008 SCMR 1556), has held as under:-

6. It is an admitted fact that the complainant did not mention the name of the petitioner and co-accused in the F.I.R but later on implicated them in the commission of offence through supplementary statement recorded before the Investigating Officer on the same day. The complainant has failed to disclose as to how he came to know the name of the accused. In case the contents of the first information report and supplementary statement are put in juxtaposition then it is crystal clear that the complainant has taken altogether U-Turn from his previous stand. This fact makes it a case of further inquiry under section 497, Cr.P.C. Moreover, since name of the petitioner and co-accused were not mentioned in the F.I.R and was mentioned in the supplementary statement by complainant which fact also brings the case within the ambit of further enquiry".

In case of *Muhammad Mithal alias Imam Bux v. The State* (2012 YLR 515), bail was allowed to accused by holding the case of accused as one of further enquiry; when the accused was neither named nor his descriptions was given in F.I.R, however his name was disclosed by two witnesses in their

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statements under Section 161 Cr.P.C, after about three days of registration of F.I.R and no any identification parade was held.

In another case of similar nature, i.e. *Muhammad Ilyas v. The State* (2010 P.Cr.L.J 1782), it was held that:

"Petitioner's name does not figure in the FIR but he was later on implicated in the said F.I.R. through supplementary statement after registration of the case. The case was registered on 12.6.2009 while the occurrence is stated to happen on 7.6.2009. There is delay of five days in lodging the F.I.R. Further, supplementary statement was recorded later on after registration of the F.I.R, which is belated. False implication of the petitioner cannot be ruled out. The petitioner is implicated being servant of main accused Irfan against whom, allegation of commission of Zina is leveled who is not petitioner before this Court. Challan of the case has been submitted and the petitioner is no more required for any investigation or recovery. The alleged abductee had reached her home. It will not fulfill any useful purpose keeping the petitioner behind the bars as punishment. No doubt, serious offence has allegedly been committed as narrated in the F.I.R. in whole story there is no role of the present petitioner for commission of the offence mentioned in the F.I.R. it is a case of further inquiry into the guilt of the petitioner.

Similar points were also examined by this Court in the case of "*SOHNO BULLO versus THE STATE* 2012 P.Cr.L.J 986 (Sindh), and while granting bail to accused, it was observed as under:-


Name of accused had not been mentioned in the F.I.R and he was implicated after eleven days of the occurrence by witnesses in their statements recorded under Section 161, Cr.P.C, therefore, reasonable grounds existed that the name of accused had been implicated after due deliberation and consultation and possibility of his false involvement could not be ruled out; contents of F.I.R revealed that all three prosecution witnesses were present at the place of occurrence and they had seen the unidentified accused persons but they did not nominate accused in the F.I.R and took eleven days to acknowledge the accused and implicated him in their statements, which created doubt in the prosecution case".


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7. The case has been challaned and applicants are no more required for further investigation. From tentative assessment of material available on record, it appears that case of applicants/accused requires further inquiry in terms of Section 497(2) Cr.P.C.

8. Accordingly, keeping in view the law laid down in the cases cited above, instant bail application was allowed vide short order dated 28.01.2020, whereby the applicants were admitted on post arrest bail subject to furnishing their solvent surety re sum of Rs.300,000/- (Three hundred thousand rupees) each and P.R bonds in the like amount to the satisfaction of learned trial Court. These are the reasons for the same.

9. The observations made herein above are tentative in nature and only for the purpose of deciding this application which shall not, in any manner, influence the learned trial court while deciding the case.


Judge


Judge