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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Crl. Bail Appln: No.S-194 of 2013

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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25.7.2013:

For Hearing:

Mr. Manzoor Hussain A. Ansari: advocate for applicants.

Mr. Fida Hussain Shah: State Counsel.

Salahuddin Panhwar, J.- Through instant application, applicant Jameel alias Zamir Ahmed and three others seek post arrest bail in crime No.05/2013, registered at Police Station 20-Miles, under Sections 302, 395, 148, 149, 114, P.P.C.

2. Precisely, relevant facts are that complainant Mst. Tagul lodged F.I.R on 15.4.2013, alleging therein that they have differences with Haji Mangnejo and others, as they were causing help to their enemy Mour Junejo. Complainant along with Ali Murad and Abdul Vakeel were available on their lands, where Abdul Aziz son of the complainant was also grazing the cattle; meanwhile accused Jameel Ahmed, Bashir Ahmed, Haji, Yousuf, Bhagial, Hoat, armed with guns, accused Ghazi Aman, armed with gun, Ghulam Qadir, Khadim, Ahsan, Zaheer, Muneer, all armed with Kalashnikovs, accused Meenhal, armed with gun, and three unidentified accused persons, armed with Kalashnikovs, emerged there. Accused Ghazi instigated to others, whereby on his instigation accused Khadim, armed with Kalashnikov, caused straight fire upon Abdul Aziz, who received such injury; thereafter other accused persons also caused fire shots upon the deceased; they raised hue and cry, whereby other villagers armed with weapons converged there; thus accused persons made their escape good. Complainant party found injured Abdul Aziz having various injuries on his body and he succumbed to such injuries. During this incident complainant party also encountered with accused persons, such encounter lasted for half an hour and accused persons also took away the cattle.

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3. It is further revealed that after lodgment of F.I.R applicants along with other accused persons, were arrested, during investigation, applicants were found innocent and their names were placed in column No.2 of the charge-sheet but concerned magistrate did not agree to such report; thereby cognizance was taken

4. Learned Counsel for the applicants, *inter alia*, contends that main role is attributed to accused Khadim; whereas it is alleged that all remaining accused caused direct fire shots upon deceased; enmity is admitted between the parties, thus false implication cannot be ruled out; during investigation applicants were found innocent and their names were placed in column No.2, but such report was not accepted by the learned Magistrate and he took cognizance; applicants are behind the bar, instant case falls within the limitation of further inquiry, therefore, they are entitled for bail. In support of his contentions he has relied upon the case of *Muhammad Asghar v. The State*, (2002 SCMR 1299), *Abdul Haq v. The State*, (2002 P. Cr.L.J 1989) and *Wazir v. The State*, (2008 M L D 646).

5. Conversely, learned State Counsel, while refuting the submissions of learned Counsel for the applicants, argued that applicant's names transpire in F.I.R with specific role; police report is not binding, while deciding the bail application; this case relates to the murder coupled with dacoity, therefore, applicants are not entitled for bail.

6. Heard the learned Counsel and perused the record.

7. After careful consideration to the contentions of learned Counsel and meticulous examination of available record; it is surfaced that complainant had dispute with applicant No.4 and others, on the reason that they were helping to their rival Mour Junejo. It is also revealed that about 13 persons named in F.I.R and three unidentified



persons, armed with lethal weapons have been implicated with the accusation that all jointly caused straight fires upon deceased, whereas one specific injury is attributed to co-accused Khadim. It is also alleged that encounter was happened with accused persons, complainant party also retaliated and such encounter was continued up to half an hour. It is further elucidated that during investigation applicants were found innocent and main charge^{is} against accused Yousuf, Bhagial, Bashir, Zaheer, Ahsan and Muneer. It is settled proposition of law that *ipse dixit* of police is not binding upon the Court(s) while deciding the bail application(s), however same can be looked into coupled with other material, but in instant case enmity between the parties is admitted fact, and it is also not disputed that there are general allegations against all accused persons except accused Khadim. Thus, these facts are sufficient to make the case of further probe. With regard to the allegation of dacoity committed by the accused persons, the F.I.R, itself spell out that complainant party and villagers encountered with accused persons, such encounter lasted for about half an hour, thus, In such circumstances, allegation that accused persons^s taken away the farm animals also requires further probe.

8. Keeping in view the given circumstances, applicants have succeeded to bring their case within purview of subsection (2) of Section 497, Cr.P.C, thus they are hereby admitted to bail in the sum of Rs.300,000/- (three lacs) each^{3 accused} and P.R bond in the like amount to the satisfaction of trial Court.


JUDGE