

ORDER SHEET

IN THE HIGH COURT OF SINDH CIRCUIT COURT, LARKANA.

Cr. Bail Appln. No. S- 65 of 2014.

Date of hearing _____ Order with signature of hon'ble Judge _____

1. For orders on office objection as flag A.
2. For Hearing.

28.03.2014.

Mr. Habibullah G. Ghouri, advocate for the applicant.

Mr. Imtiaz Ali Jalbani, A.P.G

Mr. Khalid Iqbal Memon, advocate for the complainant.

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SALAHUDDIN PANHWAR, J.:- Through instant application, the applicants seek post arrest bail in Crime No.35 of 2013 registered at P.S Warrah U/Ss 302, 148, 149, 337-H(2) PPC.

2. Precisely, relevant facts are that on fateful day complainant along with his son Siraj Ahmed and nephew Badaruddin was going on the donkey cart to their (harap) land. when at about 5.30 a.m, they reached near Animal Hospital Warrah, meanwhile accused Zulfiqar, Rustam, haneef, Saeed and Eid Mohammad armed with pistols emerged there, accused Zulfiqar while asking Siraj that he has spoken harsh words with him, caused him fire shot with intention to commit his murder, thereafter accused Hanif, Rustam also caused fire shot upon Siraj which hit him, the remaining accused also fired upon him, thereby complainant party raised hue and cry. Thereafter, accused persons escaped on their motorcycles towards western side. After departure of accused party the complainant found firearm injuries on the body of his son and, blood was oozing and he was expired. Complainant leaving the P.Ws over the dead body of deceased went to P.S and registered the FIR to the above effect.

3. Learned counsel for the applicants has, inter-alia, contended that witnesses are closely related, set up and inimical towards the applicants therefore, false implication cannot be ruled



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out; except aerial firing there is no overt act attributed to the applicants; question of vicarious liability will be determined by the trial Court, thus applicants are entitled to concession of bail.

4. Conversely, learned A.P.G assisted by Mr. Khalid Iqbal Memon, counsel for the complainant, has argued that the incident was happened in Warrah town at 5.30 a.m where applicants along with other accused persons with common intention 'duly armed with weapons caused murder of Siraj Ahmed, therefore, applicants are not entitled to bail.

5. While scanning of the available record it is pertinent to mention that though specific allegations are attributed to Zulfiqar, Hanif and Rustam whereas against applicants it is alleged that they also caused fire shots upon deceased. It is further surfaced that applicants are residing at the sufficient distance from the place of incident but their availability in early hours at the place of incident reveals that they had facilitated the co-accused persons who are yet absconders thus in the instant circumstances the plea that vicarious liability can be determined at trial has no force. It is worth to add here that it is not universal proposition that in every case common intention will be determined at the trial; common intention can be assessed at bail stage, if sufficient evidence is available. However, such aspect cannot be examined by one and same yardstick in all cases, it depends upon the circumstances of each case whereby such inference can be drawn with regard to that applicability. Candidly, applicants participated in crime with specific role and recovery of weapons was effected from them therefore, I am of the considered view that sufficient evidence is available against the applicants regarding their participation in the commission of murder which provides penalty of capital punishment therefore, they are not entitled to bail.

6. For the foregoing reasons in detail, this bail application was dismissed vide short order dated 28.03.2014.

7. It is needless to mention here that the observations given hereinabove are tentative in nature which shall not influence the trial Court while deciding the fate of the accused/applicants on conclusion of the trial.

JUDGE 3/4/2014