

**ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Criminal Bail Application No.S-292 of 2014

Date of hearing: 15-05-2015.

Date of decision: 15-05-2015.

Applicant: Iban Lakho through Mr. Ayaz Ali Gopang, Advocate.

Respondent: The State through Mr. Mushtaque Ahmed Abbasi, D.D.P.P.

Complainant: Through Mr. Ahsan Gul Dahri, Advocate.

MUHAMMAD IQBAL KALHORO, J: -Through the instant bail application, the applicant is seeking post arrest bail in crime No.03/2013 of PS Khah, registered under sections 337-H(ii), 504, 302 & 34 PPC.

2. The facts which have been narrated by the learned counsel for the applicant are that on the day of incident viz. 14-10-2013 at 02 ½ hours the complainant along with his family members was sleeping in his house. The present applicant armed with pistol along with his brothers namely Ali Nawaz armed with pistol and Imam Bux Lakho armed with gun trespassed in his house of the complainant party and then co-accused Ali Nawaz made straight fire on the son of complainant namely Sajjan whereas the co-accused Imam Bux is alleged to have made fire which however, did not hit any person.

The allegation against the present applicant is that he made aerial firing in order to cause harassment to the other family inmates so that they could not offer any resistance. The FIR of said incident was registered on 14-09-2013 at about 16 ½ hours.

3. Mr. Ayaz Ali Gopang, learned counsel for the applicant has argued that the applicant has been implicated in this case on the basis of enmity which has admitted by the complainant in the FIR. His further contention is that in such circumstances, false implication of the accused cannot be ruled out. He has also emphasized on the point that in the present case preliminary investigation has been conducted as it is crystal clear from the record that inquest report, last Chakas form and post mortem of the deceased were conducted before registration of FIR, which according to him, is illegal and vitiate the very basic of the _____ thus, making the case against the applicant is to be of further inquiry. His next contention is in respect of role of the present applicant which is to have made aerial firing at the time of alleged incident. In support of such contention, he has stated that vicarious liability of the applicant can only be determined during the trial and since the applicant / accused has not been alleged attributed in active role in the FIR by the complainant, guilt of the applicant would require further inquiry as contemplated under section 497 (1) Cr.P.C. He has further contended that applicant / accused was arrested on 01-11-2013

and since then he is behind the bars, yet no progress has been made by the prosecution in the trial. His view is that the applicant cannot be alleged to in jail for an indefinite period _____. In support of his arguments, he has relied upon the cases reported in 2008 UC 880, 2004 YLR 2434, 2007 P.Cr.L.J 681 & 682, 1999 P.Cr.L.J 890, 2004 SCMR 864 and 2014 SCMR 1347. He has lastly requested for release of applicant on bail.

4. While rebutting the contentions of learned defense counsel, Mr.Ahsan Gul Dahri advocate has contended that two points in the present case are viz. place of incident and time of incident. He has stated that the place of incident and time of incident sufficiently established guilt of the accused for the purpose of deciding question of bail as according to him while deciding bail application only the tentative assessment into the alleged facts has to be made. According to him, these two points are sufficient to establish that applicant was sharing common intention along with the main accused as his presence is un-denied and his being armed with a weapon at the place of incident does not furnish any other explanation except that he was facilitating the main accused in commission of offence. According to him, the role of the applicant attracted the penal provision of section 34 PPC, as such, he can be jointly held responsible for committing murder of the deceased. His next contention is that after arrest of the applicant, the incriminating

weapon which he had used at the time of commission of offence has been recovered from him. He has also rebutted the contention of learned counsel regarding delay in the registration of FIR by arguing that delay parse is no ground for grant of bail. More so, since the incident happened in the countryside where the conditions are not such to reach at PS within a reasonable time; the delay in registration of FIR stands explained. He has further contended that as far as presence of the applicant at the spot is concerned, it has been denied and all the PWs in their 161 Cr.P.C. statements have supported prosecution story would _____ and presence of such is prima facie evidence against the applicant, he cannot be enlarged on bail. In support of his arguments, he has relied upon case reported in 2006 P.Cr.L.J 1984, 2011 MLD 1171& 1989 SCMR 239. He has requested for dismissal of the instant application.

5. Mr. Mushtaq Ahmed Abbasi, learned D.D.P.P. appearing for the State has adopted the arguments of learned counsel for the complainant and has further pointed out that from the spot several empties were recovered which establish the presence of the applicant at the spot. He has also emphasized the presence of the applicant / accused is not denied and that sufficient material available with the prosecution against him.

6. I have considered the arguments of learned counsel for the parties and have perused the material available on record.

7. The allegations against the applicant are that he with common intention with his two brothers trespassed into the house of complainant during night hours where his brother namely Ali Nawaz committed murder of deceased namely Sajjan @ Ghulam Shabbir Lakho. The contents of FIR further show that there was enmity between the parties over the blocking of government way and on such dispute the accused party are said to have already issued threats to the complainant party. The contents of FIR show that the incident did not take place at the spur of movement has called to be implications then the one which is committed by the accused after making a preplan. The presence of applicant in the FIR as well as in the statements of the witnesses recorded under section 161 Cr.P.C. has not been denied. It is apparent that present applicant was duly armed with weapon which has also been recovered from him through investigation and such recovery also supports the prosecution story as alleged by the complainant in the FIR. The presence of the applicant at odd hours in the house of complainant prima facie furnishes sufficient material to connect him with the commission of offence. I fully agree with the contentions of learned counsel for the complainant that in the present case the place of incident as well as time of incident are important. This is a case where bail cannot be granted to the applicant merely on the basis since he has not been attributed any role at the time of commission

of offence, therefore, his case falls within the ambit of further inquiry as contemplated under section 497 (1) Cr.P.C. because of had the incident happened promptly without their being any pre-consent of the accused, the implication of which would have been called different for the case of present accused and his entitlement to the bail could have been decided in his favor. However, during odd hours he along with two brothers trespassed in the house of complainant where he in order to pressurize caused harassment to the inmates of the family so that they should not make any resistance in commission of the offence, cannot be simply ignored just because he is not attributed any role to have caused fatal injury to the deceased. I am of the view that provision of section 34 PPC is very much attributed in the present case and unless the evidence is recorded this deeply examined by the Court, he cannot be said to have not shared the common intention with the other two accused. Under the circumstances, this application merits no consideration, which is dismissed accordingly. However, the trial Court is directed to expedite the matter and conclude the same preferably within a period of six (06) months.

Criminal bail application stands disposed of.

JUDGE

A.C