

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA

Criminal Bail Appln. No. S-43 of 2024

Applicants	1. Dawood son of Muhammad Yaqoob Gaincho 2. Dildar son of Muhammad Yaqoob Gaincho Through Mr. Fahad Memon, Advocate
Complainant	Patasho Gaincho Through Mr. Amanullah Luhar, advocate
The State	Mr. Aitbar Ali Bullo, D.P.G for the State
Date of hearing:	02-05-2024
Date of Order:	02-05-2024

SHAMSUDDIN ABBASI, J.- Through instant criminal bail application the applicants/accused Dawood and Dildar seek post-arrest bail in Crime No. 04/2023, registered at Police Station Gaibi-Dero, for the offence U/S 302, 114, 337-H(2), 148 and 149 P.P.C, after rejection of their bail plea by the learned trial court vide order dated 06.01.2024.

2. The facts of the prosecution case are that on 20.05.2023, the applicant along with co-accused duly armed with deadly weapons came at the scene of offence and co-accused Sikandar Ali caused K.K shot at deceased Bashir Ahmed, which hit on his right side iliac region and accused Abdullah caused rifle shot at deceased, which hit on his thigh of right leg and accused Sabir caused repeater shot at deceased Bashir Ahmed, which hit on his right hand. It is further alleged in the F.I.R that applicant made aerial firing, thereafter all the accused fled away from the scene of offence, then the complainant lodged this F.I.R with Police Station.

3. Learned counsel for the applicants/accused has contended that applicants/accused are innocent and they have falsely implicated in this case; that no specific role has been assigned to applicants and pistol recovered from the applicant Dildar was foisted upon him in order to

strengthen the main case and sharing of common intention requires further inquiry U/S 497 Cr.P.C. He has, therefore, prayed for grant of post-arrest bail to the applicants/accused.

4. On the other hand, learned Deputy Prosecutor General assisted by learned counsel for the complainant has vehemently opposed for grant of bail on the ground that applicants are nominated in the F.I.R with specific role of aerial firing; during investigation the pistol has been recovered from applicant Dildar and there is positive F.S.L report, which connects him in the alleged offence. They have prayed for dismissal of bail application.

5. Heard learned counsel for the applicants, learned Deputy Prosecutor General, learned counsel for the complainant and perused the material available on the record.

6. Admittedly there is delay of one day in lodging of F.I.R and in background of enmity, it cannot be ruled out that F.I.R has been lodged with due deliberation and consultation; specific role of causing fire arm injury has been assigned to co-accused Sikandar Ali, Abdullah and Sabir and mere presence as well as role of aerial firing has been assigned to present applicants/accused, therefore, in my humble view sharing of common intention as well as vicarious liability requires further inquiry in terms of Section 497(2) Cr.P.C in view of law laid down in various pronouncements of Hon'ble Supreme Court. I rely on the case of *Mumtaz Hussain and 5 others v/s. The State* reported in **1996 SCMR 1125**.

7. The case of *Mukaram v. The State and another* (**2020 SCMR 956**) is very much applicable to the facts and circumstances on instant case. In similar circumstances, the Hon'ble Supreme Court had been pleased to grant bail to accused. It was observed by Hon'ble Supreme Court as under:

“There is no denial to this fact that four persons are involved in this case with allegations of causing indiscriminate firing. The deceased sustained only one injury to his person which proved fatal, such allegation is generalized in nature and no one can be saddled with responsibility of causing injury to the deceased”.

8. In case of *Mazhar Hussain versus The State and another (2012 SCMR 887)*, the Hon'ble Supreme Court while dealing with similar type of case, has held as under:-

"The record reveals that the petitioner is not charged for firing any shot at the deceased. He is charged only for inflicting an injury on the head of the deceased with sharp side of the hatchet. The said injury in the first instance was mentioned as lacerated but then changed as incised. What is the nature of the injury in view of the background mentioned above; whether charge, in the matrix of the case could be held to be exaggerated; whether the petitioner in view of the role assigned to him, could be held to be vicariously responsible for the murder of Mst. Hameeda Sultana and whether he could be awarded sentence in terms of imprisonment in view of the proviso to section 337-N(2), when so far there is nothing on the record to show that he is hardened, habitual, dangerous or desperate criminal, are the questions requiring further inquiry. The fact that the petitioner has been in jail for almost 10 months would further tilt the scales of justice in favor of bail rather than jail."

9. In view the above facts and circumstance and the *dicta* laid down by Hon'ble Supreme Court of Pakistan in cases (*supra*), the case of applicants seems to be one of further enquiry as contemplated in subsection (2) of Section 497 Cr.P.C and the tentative assessment of material available on record, it appears that applicants have made out their case for further inquiry, therefore, the applicants/accused are admitted on post-arrest bail subject to furnishing their solvent furnishing solvent surety in the sum of Rs.300,000/- (Rupees three hundred thousand) each and P.R bond in the like amount to the satisfaction of trial court.

10. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial court while deciding the case of either party at trial.

J U D G E

Abdul Salam/P.A