

Order Sheet.
HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD.
 CR. B.A. NO.S-490 OF 2009.

<i>Date</i>	<i>Order with signature of Judge</i>
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Date of hearing:05.04.2010.

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1. FOR ORDERS ON MA NO.1963 OF 2009.
2. FOR HEARING.

Mr. Rana Rahail Mahmood, Advocate for the applicants.

Mr. Shahid Ahmed Shaikh, Assistant Prosecutor General, Sindh.

Mr. Anis-Ur-Rehman, Advocate for complainant.

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AQEEL AHMED ABBASI, J. - Through instant bail application, applicants Noor Muhammad, Dil Murad and Sada Bux seek bail in Crime No.87 of 2008 registered at Police Station Taluka Mirpurkhas, under sections 302, 114 and 34 P.P.C.

2. Bail plea of the applicants was declined vide order dated 19.6.2009, passed by learned Ist Additional Sessions Judge, Mirpurkhas in Sessions Case No.160 of 2008.

3. Facts of the prosecution case, in brief, are that complainant Rajab Ali on 13.10.2008 at 0700 hours lodged the F.I.R. about an incident allegedly committed on 13.10.2008 at 1440 hours, stating that Deenghars put by one Allah Bux upon his land, were burnt by the complainant party, which annoyed them. It is alleged that on 13.10.2008 the complainant alongwith his father and Hari Sahib went on Donkey Cart to take woods and while coming back they saw that accused Noor Muhammad and Dil Murad both were armed with hatchets and Allah Bux, who was empty handed, were standing in the way. On seeing the complainant party Allah Bux raised hackle and asked his companion to kill the complainant party. Thereafter, Ali Muhammad caused hatchet blow on the head of complainant's father while Dil Muard made aerial fire and Sada Bux caused back side hatchet blows to complainant and Sahib. On their cries Usman and Dittal came to their rescue and the accused persons fled away. Thereafter complainant party took the injured to Civil Hospital, where he succumbed to his injuries. Such F.I.R. was registered.

4. After investigation the matter was challaned and the present applicants were arrested and since their arrest, they are behind the bars.

5. It is inter alia contended by learned counsel for the applicants that the applicants are behind the bars and facing hardship on account of non-prosecution of the case which is pending since October 2008 and even charge has yet not been framed. According to learned counsel, the delay in prosecuting the matter is attributable to the prosecution, benefit of which must go to the applicants. Without prejudice to this contention, the learned counsel further stated that even on merits the applicants have a good prima facie case for grant of bail for the reasons that complainant having previous

enmity over the irrigation land which is in possession of the applicants, and a suit is pending in the Civil Court, have falsely implicated the applicants in the instant crime. The learned counsel has referred to the contents of the F.I.R. to show that no direct role has been assigned to any of the present applicants which could possibly cause injury and consequent death of the deceased namely Muhammad, the father of the complainant. He further submitted that no recovery has been affected from the present applicants inspite of the fact that they were arrested on the same date from their houses. The allegation against the applicant Dilmurad is of ineffective aerial firing causing neither any injury or hurt to any of the complainant party. Similarly the allegations against the applicants Noor Muhammad and Sada Bux are also of general nature and alleged hatchet injuries to the complainant party who have neither been examined by the Doctors nor any medical report in this regard has been produced by the prosecution, which falsify the version of the complainant. Per learned counsel, the alleged charges against the applicants/accused do not fall within the prohibitory clause hence they are entitled to the concession of bail. In this regard, he has placed reliance on the following cases:-

1. Shafqat Shehzad alias Nagoo Vs. The State (2003 MLD 1704).
2. Muhammad Shahzad Siddique Vs. The State and another (PLD 2009 SC 58).
3. Faraz Akram Vs. The State (1999 SCMR 1360).
4. Shoaib Mehmood Butt Vs. Iftikhar-ul-Haq and 3 others (1996 SCMR 1845).
6. Conversely, the learned APG opposed the grant of bail on the ground that the applicants/accused have been nominated in the F.I.R. and the common intention is established on account of being close relatives. However, on query of this Court, the learned APG could not controvert the fact that no direct role has been assigned to the present applicants as far as the allegation of causing death to the deceased is concerned.
7. Learned counsel for the complainant adopted the arguments of learned APG.
8. I have heard learned counsel for the parties, perused the record and examined the case law relied upon in this regard. On perusal of the case diary of the trial Court filed alongwith instant bail application, it appears that matter is not proceeding and the same is being lingered on without any progress. The charge has yet not been framed for the purported reason that since one of the accused persons other than present applicants has not been able to engage a counsel, therefore, the charge against rest of the accused persons is also not framed. It is pertinent to observe that the learned trial Court has not bothered to provide a counsel to such accused in terms of notification of Sindh Government whereby every accused who is not in a position to engage a counsel, charged in the case of capital punishment is entitled for a counsel on State expenses. It appears that only on this account

the rest of the accused persons are put to face the agony and are being denied opportunity of fair and speedy trial. On perusal of the contents of the F.I.R. and the Challan submitted in the instant crime, it appears that no direct role has been assigned to the present applicants nor any incriminating evidence has been produced by the prosecution against the applicants to connect them with the charge stated in the F.I.R. Moreover, the prosecution case is not free from doubt and requires further inquiry. The case law relied upon by learned counsel for the applicants appear to be applicable to the facts and circumstances of the case in hand. Under these circumstances, I am of the view that present applicants have made out a case for grant of bail. Accordingly, by short order dated 5.4.2010, the applicants were admitted to bail subject to furnishing surety in the sum of Rs.100,000/- (One lac) each and P.R Bonds in the like amount to the satisfaction of the trial Court with further direction that if the applicants misuse the concession of bail, the trial Court shall be at liberty to initiate the proceedings against the applicants for canceling their bail according to law. These are the reasons for such short order. Needless to mention that observations made hereinabove are tentative in nature and the trial Court shall not be prejudiced by any such observation and shall decide the case strictly on merits and on the basis of evidence available on record.

The instant bail application stands disposed of in the above terms.

Dt:13.4.2010.

JUDGE