

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Cr. B.A. No. 308 of 2025

[Manzoor Ali & othersv.....The State]

Date of Hearing : 22.05.2025

Applicant through : Syed Tarique Ahmed Shah, Advocate

Respondents through : Mr. Muhammad Raheem Hakro,
Advocate for Complainant.

Mr. Shahid Ahmed Shaikh, Addl. P.G.

ORDER

Miran Muhammad Shah, J:- The applicants being aggrieved by the Order passed by learned Additional Sessions Judge-I, Tando Allahyar passed in Cr. Bail Application No. 133 of 2025 in Sessions Case No. 5/2025, have challenged the order dated 14.03.2025, praying for the grant of bail in Crime No. 41/2024, under Section 302/397/396 PPC.

2. The brief facts as narrated by the complainant is that on 14.11.2024, complainant and his brother Imam Bux were busy in cultivation at their lands when they received phone call of their brother Muhammad Hassan to bring their meal on their lands who told them that Imran is bringing it on the motorcycle, after a while, they saw that one motorcycle is coming from the village side, after shortwhile the lights of the motorcycle went of and they heard firing. Upon firing, the complainant and his brother Imam Bux started running towards the Katcha Path and saw that two motorcycles started and went away. The complainant in the light of the mobile saw that his brother Muhammad Hassan has sustained bullet injury on right leg and his nephew Imran aged about 23/24 years had sustained injury on his left lumber region and left wrist. The injuries were of

fire arms and blood was oozing from the injuries. The brother Muhammad Hussain told the complainant that Hazar Khan Murry armed with pistol, Manzoor Murry, Abdul Sattar Murry, Asghar Ali Panhwar duly armed with hatched attempted to rob motorcycle. When they resisted, Hazar Khan Murry made straight fires through his pistol upon them and other accused persons caused injuries with handle of the hatched. So many villagers gathered there and with the help of the co-villagers, they apprehended the above named persons and the motorcycle. Thereafter information was communicated to the police station of the jurisdiction. After a while police of P.S. Sanjar Chang reached there. He handed over all five persons along with four hatches and two motor cycles in the police custody and police sent them for treatment. When they proceeded to RHC Chambar alongwith injured persons where after examining, the doctor declared the injured Imran as dead. They communicated such information to the police and police reached at the hospital and got the postmortem of the deceased and the dead body was given to the complainant for funeral obligation and injured was provided first aid and referred to civil hospital Hyderabad. After funeral they appeared before the P.S. and stated that Hazar Khan Murry, Manzoor Murry, Abdul Sattar Murry, Asghar Ali Panhwar, attempted to commit robbery of the motorcycle but upon resistance, complainant brother and maternal nephew were attacked upon. One accused Hazar Khan Muury made straight fires and committed murder of complainant's maternal nephew Imran and caused injury to his brother Hassan whereas other accused persons cused handle of hatched below.

3. After registration of FIR the concerned police conducted the investigation and arrested all the accused persons. Thereafter the investigation was completed and challan was submitted before the competent court of law.

4. The counsel for applicant in support of bail application contends that there is no reasonable ground to believe that the applicant accused has committed the alleged offence which they have been accused of. He further stated that the allegations levelled in FIR are directly in conflict with the record. The complainant alleges that all the applicant/accused were apprehended on spot, whereas, the memo of arrest falsifies the allegation as according to the memo of arrest, all the accused were arrested on 15.11.2024. He further contended that no details of the motorcycle were mentioned in the FIR which allegedly was recovered from the place of incident. As per the counsel, neither they were arrested nor the recovery was effected from the spot. Despite deceased being injured by a fire arm, no recovery of pistol was effected from the accused persons confirming that the fact that none of them had pistol at the time of alleged incident, nor any of them fired upon the deceased or the injured. He further stated that one of the applicant/accused had made a complaint against the present complainant earlier for committing an offence of robbery, hence the enmity existed between the parties. As per counsel there is a delay of 15 hours in lodgment of FIR for which no plausible explanation has been given. He further contended that there is a conflict between medical and ocular evidence. He further states that the other sections applied that is 396 and 397 PPC do not fall within the prohibitory clause. That

incident did not occur through out fire arm injury as the medical evidence does not confirms such fact.

5. However, advocate for complainant as well as learned APG have taken a contrary view and have stated that there is no delay in lodgment of FIR and routine delay has been fully explained. All the present applicant/accused have been duly nominated in the FIR as they were all apprehended and caught red handed from the place of the incident. As per their contentions, the main accused Hazar Khan in his statement under 161 Cr.P.C after his arrest had admitted his guilt and stated that he threw the pistol in the nearby sugarcane crop. He led the police party to the said place from where the pistol was traced out and was placed before police, whereas, other recoveries of motorcycles and hatched was made from his possession. They both have denied any conflict in the ocular and medical evidence. Learned counsel for the complainant further stated that deeper appreciation of evidence is not required at bail stage and only tentative assessment needs to be made which clearly shows that the applicant/accused are fully connected with the heinous and gruesome offence which carries a punishment of death/life imprisonment and falls within the provisions of prohibitory clause mentioned under Section 497 Cr.P.C.

6. I have heard the counsel for the applicant/accused and the complainant so also the learned APG. It is an admitted position that the deceased was shot through a fire arm pistol which caused his death and those committing such offence were apprehended by the complainant party with the help of local villagers at some distance from the place of incident. All the four applicants/accused alongwith

accused Hazar Khan adjointly and in a planned manner had tried to commit the robbery of motorcycles with common intention. All the recoveries including motorcycles and the hatchets were made on the spot at the time of apprehension of the applicant/accused, whereas, weapon used in the crime was later on recovered on the pointation of main accused Hazar Khan. The delay caused is well explained and was mainly due to religious rituals. *“If some delay has occasioned in lodging the F.I.R. that would also not be fatal in the circumstances because a young boy had been killed in brutal manner, therefore, if owing to some anguish and shock some time is consumed in lodging F.I.R., it cannot be considered fatal for prosecution case”*¹. The dacoity of motorcycle in the villages have become a regular offence for which the police have also not played any role to curtail it, such offences cannot be dealt leniently by the courts. The offenders must be taken to task as it's a poor man's ride which is usually targeted many times is bought by the owner with their hard earned money. In this case it was just a co incident and luck on the part of the complainant that very soon all the accused applicants were arrested from the spot and recovery was effected upon them. No doubt the murder was committed by one Hazar Khan who is not applicant in this present bail application in hand, however, the common intention cannot be ruled out as all the time such incidents take place where two to four people try to encircle the victim and commit motorcycle robbery. As they require more people to commit this robbery where one or two people are required to ride away stolen motorcycle. The punishment for the said offence is death penalty/life imprisonment which fall with the prohibitory clause. I do not see any conflict of

¹ Tahir Muhammad Ashraf v. Tahir alias Billo (2005 SCMR 383)

medical evidence with the ocular account which are in full conformity with each other. As held by the Superior Courts only tentative assessment is to be made at the time of deciding of bail application and deeper appreciation is not necessary which is left with the trial court. The record also shows that case has already been challaned and the applicants are facing trial. *“Courts should not grant or cancel bail when the trial is in progress, and proper course for the courts in such a situation, could be to direct the Trial Court to conclude the trial of the case within a specified period”*². It is for the trial court now to look into the role of each applicant in commission of the offence and may fix the vicarious liability. In such circumstances, I am of the view that present applicants have not made out a case for bail, hence the present bail application of all the applicants/accused is dismissed. However, learned trial court is directed to conclude the trial within three months or atleast examine the material witnesses. The present applicants/accused shall be at liberty to approach the trial court if at all no incriminating evidence come on the record.

7. The observation made herein above are tentative in nature and would not prejudice the case of either party.

JUDGE

² Rehmatullah v. The State (2011 SCMR 1332