

51

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Cr. Bail Appln. No. S- 552 of 2015.

Date

Order with signature of Judge.

1. For orders on office objection as flag A.
2. For orders on M.A No. 3827/2015.
3. For hearing.

11.11.2016.

Mr. Saeed Ahmed Bijarani, advocate for the applicant.

Mr. Sardar Ali Shah, A.P.G.

Mr. Ashfaque Hussain Abro, advocate for the complainant.

=====

Muhammad Iqbal Kalhoro-J.:- By means of this application, the applicant is seeking post arrest bail in Crime No.44 of 2015 registered U/Ss 302, 449, 148, 506/2, 337-H(2) PPC at P.S B-Section Kandhkot District Kashmir @Kandhkot.

The incident took place on 07.06.2015 at about 1.00 a.m (night) inside the house of Master Jamaluddin Jafferi situated in village Malgulzar deh Chaman Taluka Kandhkot District Kashmir @Kandhkot. The allegations against the applicant are that he alongwith co-accused entered into the said house where he and co-accused Imam Bux pointed guns at the complainant party and thereafter co-accused Ali Bux caused murder of son of complainant namely Ali Nawaz. In the F.I.R the complainant has mentioned six accused out of whom he has given names of four accused. However, on the same day in his further statement, he gave names of remaining two accused namely Mashooque Ali and Mubarak Ali. Applicant was arrested on 13.6.2015 and since then he is in jail and facing the trial.

Learned counsel for the applicant has argued that applicant is innocent and has been falsely implicated in this case; that the incident took place in the dark hours of night, therefore, identification of applicant is not without doubt; that the memo of place of incident does not show the source of light; that the applicant is real brother of main accused and it is tendency in the local area to spread the net as wide as to implicate all the family members of the main accused, and that the complainant gave names of two accused in his further statement, as such the case is one of further inquiry. Learned counsel



has also relied upon the case law reported in 2014 SCMR 27 to support his contentions.

On the other hand, learned counsel for the complainant has vehemently opposed grant of bail to the applicant, he states that applicant is nominated in the F.I.R, which is promptly lodged; that from the place of incident six (6) 12 bore empties and thirteen (13) spent bullet casings of K.K were recovered which sufficiently support the incident described in the F.I.R; that the deceased was the only son of the complainant who was brutally murdered by the accused party in his house. He has supported his arguments with the case laws reported in 2010 Y.L.R 1875 and 2008 SCMR 1451.

Learned A.P.G has not opposed grant of bail to the applicant on the ground that this case requires further inquiry as the complainant has nominated in all 6 accused, who had allegedly committed the offence but source of light is not mentioned in the memo of place of incident.


I have considered the submissions of the parties and perused the material available on record including the case laws cited at the bar. Applicant is nominated in the F.I.R with role of pointing his gun at the complainant party while co-accused committed the offence and subsequently during investigation said gun was also recovered from him. As for the ground that memo of place of incident does not show the source of light, in my view same requires deeper appreciation of the evidence which is not warranted at bail stage, however, it may be mentioned that parties are known to each other therefore, the case does not appear to be of mistaken identity. The memo of place of incident shows the footprints of six persons inside the house of complainant, which prima facie support the prosecution story viz-a-viz the accused trespassing in the house of complainant to commit murder of son of the complainant. Recovery of six 12 bore empties and 13 spent bullet casings of K.K further support the prosecution case. Incident has taken place inside the house where applicant duly armed with weapon was present therefore, prima facie his common intention can be easily gauged and understood.

Insofar as contention of learned defense counsel that before registration of F.I.R the investigation was carried out, it may be mentioned that preparation of Inquest Report, Lash Chakas Form and conducting Post Mortem of the deceased before registration of the F.I.R is not against the law. This preliminary investigation is conducted in terms of section 174 Cr.P.C read with R. 25.31 of the Police Rules, 1934 which mandate the Officer in charge of a police station or some other police officer that he, on receiving information regarding unnatural or sudden death of a person, shall immediately proceed,

after sending information to the nearest Magistrate, to the place where such dead body is present and shall act as prescribed by R. 25.33 of the Police Rules, 1934 and 174 Cr.P.C, that is to prevent destruction of evidence, draw up a report of the apparent cause of death describing the wounds, fractures, bruises found on the body and the manner or by what weapons such injury or mark appear to have been inflicted. In such case, as is provided by R. 25.31 of the above Rules, if he suspects commission of a cognizable offence, he shall register the case and commence investigation. Legally therefore, in my humble view the above initial formalities are to be completed by the police official with a view to preserve and record the elementary position and condition subsisting at the spot with regard to the dead body, its surroundings and apparent cause of death so as to be thoroughly investigated by the investigating officer after registration of the FIR. This exercise therefore, will not make the case of prosecution to be one of further inquiry.

In view of above discussion, I am of the view that at this stage, the applicant has not been able to show that his case calls for further enquiry. Consequently, the bail application is dismissed. However, the trial Court is directed to separate the case of absconders and frame the charge against the accused who are inside jail and examine the material witnesses within a period of four months. Thereafter, the applicant would be at liberty to move fresh bail application.

The bail application is disposed of in above terms. The findings recorded are tentative in nature and would not prejudice either party in the trial.


JUDGE 11-11-2016 -