

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

Criminal Bail Application No.S-1218 of 2013

Date of hearing: 10-10-2014.

Date of decision: 10-10-2014.

Applicant: Through Mr. Ghulamullah Chang, advocate.

Respondent: The State through Syed Meeral Shah, D.P.G.
Sindh.

Complainant through Mr. Abdul Hakeem
Chandio, advocate.

MUHAMMAD IOBAL KALHORO, J: - The applicant through the instant bail application seeks post arrest bail in crime No.79 of 2013, under section 302, 34 PPC of PS Site, District Hyderabad.

2. Succinctly, the facts of the prosecution case are that the complainant lodged the above stated FIR on 18-10-2013 at 2200 hours alleging therein that adjacent to his house, his elder brother Muhammad Usman alias Zaman and Ranjhan reside with their families. Beside their houses, there is one vacant plot of Hubdar Ali s/o Ameer Jan. Accused Muhammad Zaman and his sons namely Pervaiz armed with gun, Rabdino and Peeral, in order to occupy the said plot started making some digging therein on 18-10-2013. Hubdar accompanied with one

Shabbir came to Muhammad Zaman and his sons and tried to stop them from digging in his plot. Meanwhile, the brother of the complainant namely Ranjhan came over there at 0850 hours with whom the above named accused started exchanging hot words and then, accused Rabdino and Peeral in a fit of rage caught hold of Ranjhan and Pervaiz fired on him by placing the gun upon his chest; as a result of which, Ranjhan fell down on earth, where after Muhammad Zaman and his sons Pervaiz, Rabdino and Peeral while pointing gun to the complainant party fled away from the spot. Thereafter, Ranjhan was brought at hospital by the complainant party but he was pronounced dead by the doctors. The complainant after burial of his deceased brother appeared at PS and reported the matter as stated above.

3. Learned counsel for the applicant has argued that the applicant has been falsely implicated in this case on the basis of enmity with the complainant, who is his real brother. He further contended that the whole family of the applicant has been roped in this case by the complainant. Per learned counsel, no active role has been ascribed to the present applicant in the FIR and even no allegation of making any activity at the spot has been leveled against him by the complainant in the FIR, which has made the case against him to be of further inquiry. According to the learned counsel, mere presence of the applicant has been shown at the spot and as per contents of the FIR, he is not shown to

be even armed with any weapon. He lastly prayed for grant of bail to the applicant and has relied upon the case law reported in 1998 SCMR 526, 2004 SCMR 864, 2012 SCMR 265, 2012 SCMR 662 and 2012 SCMR 887.

4. Conversely, the counsel for the complainant has contended that section 34 PPC is very much attracted in the present case as the presence of the applicant is established from the contents of FIR, therefore, prima facie, case exists against the applicant, who is booked in a case falling under section 302 PPC, which carries capital punishment. According to him, the applicant is not entitled to the concession of bail in view of his presence at the spot. He relied upon the case law reported in P Cr. L J 1201, 2012 P Cr. L J 345, 2000 SCMR 78.

5. Learned D.P.G. for the State has supported the contentions adduced by the counsel for the complainant. However, he could not controvert that no incriminating article was recovered from the applicant and the memo of the place of incident does not show any empty or any blood stained earth was secured by the police during investigation from the spot. He also conceded that the police failed to notice any foot marks of the accused to establish, prima facie, presence of many accused at the scene of occurrence as alleged by the complainant.

6. I have given my due attention to the contentions raised by the learned counsel for the respective parties and have gone through the material available on the record as well as the case laws relied by them at bar.

7. Admittedly an accused, who is booked in an offence falling within the ambit of prohibitory clause under section 497(1) Cr.P.C., cannot be granted bail, if there are sufficient grounds to establish his connection with the commission of the offence. However, in appropriate cases, when the role attributed against the accused calls for further inquiry into his guilt, he can be granted bail on the ground of further inquiry. In the present case, though, the applicant has been shown to be present at the spot, but, he has not been assigned any active role by the complainant. No any injury upon the deceased is attributed against him and his alleged unarmed presence at the scene would reflect, prima facie, that his sharing vicarious liability with the main accused is a question, which can be determined by the trial Court during the trial. Learned D.P.G. has admitted that from the place of incident no any empty was recovered nor any blood-stained earth was secured nor any foot marks were noticed by the police to prima facie establish the occurrence of the incident as alleged by the complainant. The reasonable grounds do not exist to believe that the applicant has committed an offence punishable with death, imprisonment for life or imprisonment

for 10 years. The applicant is behind the bars for the last more than ten (10) months without any progress in the trial. Under the circumstances, I am of the view that the applicant has been able to make out the case for the concession of bail. Accordingly, the applicant is admitted to bail, subject to his furnishing a solvent surety in the sum of Rs.200,000/- (Two Lac) and PR Bond in the like amount, to the satisfaction of trial Court.

8. Needless to state that the observations made hereinabove are tentative in nature and shall not prejudice the case of either party before the trial Court.

Criminal bail application stands disposed of.

JUDGE

A.C